TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 363

JUAN POSADOS, JR., AS COLLECTOR OF INTERNAL REVENUE; BEN F. WRIGHT, AS INSULAR AUDITOR; VINCENTE CARMONA, ETC., ET AL., PETITIONERS,

vs.

THE CITY OF MANILA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

PETITION FOR CERTIORARI FILED MAY 4, 1926

CERTIORARI GRANTED JUNE 1, 1926

(31,898)

(31,896)

SUPREME COURT OF THE UNITED STATES

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G. R. No. 23551

United States of America

Philippine Islands

In the Supreme Court of the Philippine Islands

[Petition for mandamus]

THE CITY OF MANILA, Petitioner

VERSUS

JUAN POSADAS, JR., as Collector of Internal Revenue, VICENTE CARDOZA, as Insular Treasurer BEN F. WRIGHT, as Insular Auditor, and the METROPOLITAN WATER DISTRICT, Respondents

ORIGINAL JURISDICTION

Be it remembered that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On January 8, 1925, the petitioner by its attorney filed in the office of the Clerk of the Supreme Court a petition for mandamus, which on January 10, 1925, was amended to read as follows:

[CAPTION AND TITLE OMITTED]

AMENDED PETITION

Comes now the petitioner, the City of Manila, by its attorney, the undersigned City Fiscal, and with the leave of

this Honorable Tribunal, respectfully amends his former petition, so as to read as follows:

I

That the petitioner is a municipal corporation organized under the provisions of chapter 60, title X, of Act No. 2711 of the Philippine Legislature, known as the Administrative Code, and is empowered to sue and be sued.

II

That the respondent Juan Posadas, Jr., is, and during the period of time mentioned in this petition was, the Collector of Internal Revenue of the Government of the Philippine Islands; the respondents Ben F. Wright and Vicente Carmona are, and during the same period were, the Insular Auditor and Insular Treasurer, respectively, of the Philippine Islands, and the respondent Metropolitan Water District is a public corporation created by Act No. 2832, with powers to sue and be sued.

III

That the petitioner is entitled to a part and portion, determined by law, of the internal revenue collected by the respondent, the Collector of Internal Revenue (see sec. 488, Adm. Code), as well as to a certain per cent of the one and one-half per cent tax imposed on merchants, manufacturers, and commission merchants (see sec. 3, Act No. 3065), and that petitioner's share of said internal revenue and one and one-half per cent tax does not constitute a credit or debt owing by, and due from, the Insular Government to the petitioner, but is a property of the petitioner, belonging and appertaining to it both as a province and as a municipality of the Philippine Islands (see sec. 495, par. 2, Adm. Code), used and to be used by the petitioner for the purpose of defraying the expenses necessary for its existence and operation.

IV

That the respondent, the Collector of Internal Revenue, in compliance with his ministerial duty imposed upon him by section 497 of the Administrative Code to pay quarterly to the petitioner, the allotments of said internal-revenue and percentage tax belonging to it, has been in the past drawing

warrants for said allotments payable to the petitioner; but that from and after the month of January, 1922, the said respondent has ceased to make such payments to the petitioner, and has drawn warrants for such internal-revenue and percentage tax allotments belonging to the petitioner, payable to the Metropolitan Water District, a water corporation created by Act No. 2832 of the Philippine Legislature.

V

That the petitioner is informed, and, therefore, alleges, that the transfer and payment of said allotments of the internal-revenue and percentage tax, belonging to the petitioner, to the said Metropolitan Water District has been made by the respondent Collector of Internal Revenue by and under certain instruction of the respondent Insular Auditor, dated January 5, 1922, a certified copy of which is attached hereto and made a part hereof, marked as Exhibit A.

VI

That the petitioner is also informed, and, therefore, alleges that the respondent Insular Auditor has instructed his co-respondent Collector of Internal Revenue to pay the said allotments of internal-revenue and percentage tax aforementioned, belonging to the petitioner, to the said Metropolitan Water District, instead of the petitioner, for the purpose of setting off certain alleged debts of the petitioner for alleged water service rendered it by the said Metropolitan Water District.

VII

That the petitioner, upon being informed of the impropriety, arbitrariness, and illegality of the payments which the respondent Collector of Internal Revenue, has been making by order, instruction, and indication of the respondent Insular Auditor, in favor of the other respondent, the Metropolitan Water District, its attorney, the undersigned Fiscal for the City of Manila, sent to said respondent Collector of Internal Revenue under date of November 10, 1924, a communication informing him that such payments to the Metropolitan Water District made without, and against, the consent of the petitioner, were illegal, and that from then on he should make such payments in favor of the City of Manila in accordance

with the provisions of section 497 of the Administrative Code, a copy of which said communication marked as Exhibit B is attached hereto and made a part hereof.

VIII

That in spite of the letter or communication sent by the petitioner, through its attorney, to the respondent Collector of Internal Revenue, the latter, following instructions of the other respondent, Insular Auditor, informed the petitioner by a communication bearing date of January 5, 1925, which is hereto attached and made a part hereof as Exhibit C, that he would continue making payments of the share belonging to the petitioner of the internal revenue and of the especial tax imposed by Act No. 3065, including that corresponding to the last quarter of the year 1924, in favor of the respondent Metropolitan Water District, and the petitioner believes, and, therefore, alleges that said respondent Collector of Internal Revenue will carry out such threats unless timely prevented from so doing by this Honorable Court.

IX

That there does not exist between the Metropolitan Water District, which is neither a governmental entity, nor office, nor branch of the Insular Government (see sec. 1, Act No. 2832), and the petitioner City of Manila, any account the settlement of which the respondent Insular Auditor could legally authorize and enforce.

X

That the petitioner does not owe anything to the Metropolitan Water District by way of alleged water service rendered by said District to said petitioner; and that the latter has up to the present time been questioning the power of said District to render and collect any bill for water supplied to the petitioner.

XI

That Act No. 2832 does not empower the Metropolitan Water District, either expressly or impliedly or in general terms, to charge for water consumed by the petitioner, from the water system of the City of Manila.

XII

That the petitioner, as successor of the rights and obligations of the defunct Ayuntamiento de Manila, is the fiduciary of the Carriedo funds of which the inhabitants of the present City of Manila are the fideicomisaries and beneficiaries, and with which funds together with its municipal revenues, it constructed, and then exploited and administered since the year 1878 up to the creation of the Metropolitan Water District, the Carriedo water system for the use and benefit of the said petitioner and the inhabitants of this city (see Sagrada Orden de Predicadores *vs.* Metropolitan Water District, 22 Off. Gaz., 741; and Vilas *vs.* City of Manila, 22 U. S. 345).

XIII

That the petitioner, upon its organization as a municipal corporation under Act No. 183 of the United States Philippine Commission, which went into effect on the 7th of August, 1901, was empowered by section 17 (*w*) of said Act to maintain a water system for the inhabitants of this city.

XIV

That the Carriedo water system not being sufficient to meet the present and future needs of the people of Manila and the latter having no funds available with which to undertake the construction of an adequate water system, the Organic Law of the Philippines, known as the Act of Congress of July 1, 1902, provided in its section 70 that, for the purpose of providing funds to construct sewers and an adequate water system for the City of Manila, the Government of the Philippine Islands should be authorized to permit said city to incur indebtedness, to borrow money, and to issue and sell registered or coupon bonds, to an amount not exceeding four million dollars.

XV

That, by virtue of the provisions of said Organic Law, the United States Philippine Commission, by Act No. 1323 of April 14, 1905, authorized the petitioner to incur an indebtedness of four million dollars and to issue bonds covering the amount of said indebtedness, for the purpose of raising funds for the construction of a sewer and drainage system and an-

other adequate system for the supply of water for the inhabitants of this city, and provided, among other things, that such indebtedness should be paid by permanent annual appropriations out of the funds existing in the Insular Treasury for public works and permanent improvements of the City of Manila, and that there be established under the Municipal Board of said city, a department of sewer and waterworks construction, whose expenses as well as the salaries of the officers and employees thereof, were paid by the petitioner.

XVI

That the petitioner, conformably to the aforesaid authority of law and with the funds obtained by the issue of the bonds above-mentioned, the capital and interest on which the petitioner had been paying annually out of its own collections and revenues, for the reason that the proceeds obtained from the exploitation of said systems were not enough, constructed an additional system for the supply of water, obtaining therefor the water of the Wawa River for a reservoir constructed in Montalban, Province of Rizal, Philippine Islands, from which the inhabitants of the territory comprised within said District are at present supplied with water, as well as from that of Carriedo during the hot season, and administered and exploited such water system at Montalban in conjunction with that of Carriedo, since the construction of both systems until the creation of said District.

XVII

That as fiduciary of the Carriedo funds, with which the water supply system bearing the same name was constructed with municipal financial aid, and as owner of the new system of the water supply of Montalban, the petitioner had been enjoying the benefit of the free use of water from both systems for the needs of its department offices, markets, and other municipal buildings, for sprinkling its streets, parks, and gardens, for extinguishing fire, for public hydrants from which that portion of the inhabitants who have no means with which to defray the expenses of a private water installation obtain their supply of water, ever since the aforesaid systems began their operations, publicly, constantly, and without any opposition or interruption.

XVIII

That in view of the constant increase of the population of Manila and of the difficulties, both economic and administrative, which the petitioner encountered in attending properly to such an important branch of public service as the supply of water, and with the object of extending the benefit of the use of pure and uncontaminated water from the water supply system of the City of Manila to the inhabitants of the towns bordering said city, to which the Manila population is gradually spreading, the Philippine Legislature, by Act No. 2832, created the Metropolitan Water District, including within its territory that of the City of Manila and those of the neighboring municipalities of Montalban, San Mateo, Mariquina, Pasig, Pateros, San Pedro Macati, San Juan del Monte, San Felipe Neri, Caloocan, Malabon, Navotas, Pasay, and Parañaque.

XIX

That the said Act No. 2832 did not have more object, and, in fact, did not do more than to transfer, from the petitioner to the Metropolitan Water District, the possession, administration, control, and management of the sewer and water supply systems of the City of Manila, and, to this effect, has provided, in its section 8, that the said District receive and assume all assets and liabilities together with the bonds sinking funds of said system the same as if it were a mere receiver or judicial depositary.

XX

That Act No. 2832 originated from the House of Representatives and was approved on or about the month of March, 1919, by said legislative body in Spanish, as per certificate of the Secretary to said House which is attached hereto, made a part hereof, and marked as Exhibit D, and therefore, in construing its provisions, the Spanish text should prevail over the English for the reason that said Act was approved by the Philippine Legislature after the 16th day of October, 1916 (Act No. 2711).

XXI

That as one of the liabilities of the water supply system of the City of Manila, and among the charges, obligations,

and responsibilities going with said system which constitute a part of said liabilities, is that of furnishing water free of charge to the petitioner, in its aforesaid capacities as owner and fiduciary, for all its uses and needs.

XXII

That the water supply system of the petitioner, now administered by the Metropolitan Water District, is a private property of the petitioner, acquired by it as a corporation representing the rights and interests of the inhabitants of this city, and not as agent of the Government of the Philippine Islands, that said Government did not have, either before or after the approval of Act No. 2832, any title of ownership to said system; that no governmental power or authority in or outside these Islands has up to this time provided or ordered, in whatsoever form, and the petitioner has not received, payment or any indemnity for such water supply system of the petitioner, or for the amounts which the latter has been putting up from its own funds to apply to the payment of the capital and interest of the bonds issued by it for the construction of said system, or for the alleged deprivations of the free use of water coming from said system; and, for that matter, neither in said Act No. 2832 nor in any other law or Act of the Legislature or of the Government of the Philippine Islands has a formal transfer been executed in favor of the said Metropolitan Water District of the Carriedo funds or of the dominion or right of ownership of the petitioner over the water supply system of Montalban, transfer which, by the way, would have been unnecessary for the purpose of conveying to said District the administration of the said system, as well as also is there any provision in the aforesaid Act or in any other to the effect that the petitioner should cease to use free of charge the water coming from said system, the only rights transferred to the above-mentioned District being those of possession, administration, and control over said system and the management and administration of the funds thereof; but if such transfer of said Carriedo funds and ownership over the water system of Montalban in favor of the said District and the deprivation from the petitioner of the right and privilege of using free of charge the water of said system should be understood as included in the

creation of the said District or implied from the grant of powers conferred to it by said Act, the latter, Act No. 2832, would be unconstitutional and void.

XXIII

That far from depriving the petitioner of any of its rights and privileges, saving only those already mentioned of possession, control, and administration of the aforesaid water supply system, the Philippine Legislature, in recognition precisely of such rights and privileges, has given the petitioner, through its representatives and officials, a majority of representation in the Board of Directors of said Metropolitan Water District, amending to this effect section 3 of Act No. 2832, by means of another Act, No. 3109; and has provided, further, that just as when the petitioner had in its charge and under its control and administration the said water supply system, the revenues and collections of the petitioner (sec. 5, par. 4, Act No. 2832) should remain subject to the incidents of the administration of said system by the Metropolitan Water District, which does not have assets of its own to answer for its operations and its solvency in meeting the capital and interests of the above-mentioned bonds issued by the petitioner and those which may be issued by said District.

XXIV

That, with the desire to work with equity, in expectation of a just act of reciprocity, and considering itself entitled to use free of charge the water supplied by the above-mentioned water supply system for being the sole and exclusive owner thereof, and for being, moreover, the trustee of the funds of the Carriedo water system and because of the fact of having been, since the beginning, in continuous enjoyment, in its aforestated capacities, of the right and privilege of using free of charge the water coming from said system for its own needs and those of the public, without its having been legally deprived of such rights and privileges, the said petitioner, in spite of the insistent and unfounded demands for payment and of the presentation of bills for water service by the said District, has not endeavored nor does it endeavor to levy and collect, and in fact it has not levied upon, nor collected real-estate tax, from said District, which, otherwise, it would have

been obliged to pay on the lands, buildings, and other constructions situated in the city, pertaining to the aforementioned sewerage and waterworks systems, nor has said petitioner also tried to collect from said District, and in fact the former has not up to the present time collected from the latter, any amount for the use and occupation of the streets and other public places of said city wherein are installed and laid the pipes, mains, sewers, and other constructions and apparatus pertaining to the above-mentioned systems, which said petitioner has perfect right to do and which it is doing with respect to other similar public service corporations, such as the electric railroad and light, gas, telegraph, and telephone companies, from which the petitioner, in its capacities above stated, collects a certain per centum of their gross income.

XXV

That, even supposing that the respondent Insular Auditor is empowered to settle accounts outstanding between the petitioner and the Metropolitan Water District, the said petitioner has up to the present time contested the bills of the latter for alleged water services rendered the petitioner for the reason that the same are not authorized by law, and that said Insular Auditor is not authorized to settle or adjust accounts which, not being based upon any provision of law, are only made so by an erroneous interpretation of the law by said Auditor, by disposing in favor of said District of funds clearly belonging to the petitioner, such as its share in the collections obtained by the enforcement of the internal-revenue laws and of Act No. 3065.

XXVI

That it is a ministerial duty on the part of the respondent Collector of Internal Revenue to make in favor of the petitioner quarterly allotments of the share of internal revenue collected by him, corresponding to said petitioner, and of its portion of the tax imposed by Act No. 3065 (sec. 497, Adm. Code).

XXVII

That there is no law authorizing the respondent Insular Auditor to prevent his co-respondent Collector of Internal Revenue from complying with his ministerial duty referred

to in the next preceding paragraph hereof, or to give the latter instructions to the effect that the above-mentioned allotments which, by clear and express provision of law, ought to be made in favor of the petitioner, should be made and paid in the name and in favor of the Metropolitan Water District; nor is said respondent Insular Auditor also authorized by any law to constitute himself a judge and arbiter of disputes regarding the interpretation of laws arising between a municipal corporation and a public corporation which does not belong to the Insular Government or any executive branch of the Government of the Philippine Islands.

XXVIII

That, after the filing of the original petition in this case, your petitioner has been informed by the respondent Ben F. Wright, Insular Auditor, that in spite of the writ of preliminary injunction issued against the respondent Juan Posadas, Jr., as Collector of Internal Revenue, and for the purpose of testing his alleged power and authority to enforce settlements of accounts between the City of Manila and the Metropolitan Water District, he would issue a warrant for the sum of twenty-five thousand seven hundred thirty-six pesos and sixty-one centavos (₱25,736.61) representing the apportionment of the City of Manila in the internal-revenue collections and special tax imposed by Act No. 3065, for the last quarter of 1924, and that he would issue the necessary instructions to the respondent Insular Treasurer to honor such warrant chargeable against the account "Provincial, Municipal, Internal revenue Income—fiduciary fund."

XXIX

That your petitioner is informed, and, therefore, hereby alleges that the respondent Vicente Carmona, Insular Treasurer, unless timely and properly restrained by this Honorable Court, will honor and pay the warrant above-mentioned and will comply with the aforesaid instructions of the respondent Ben F. Wright, Insular Auditor.

XXX

That the respondent Ben F. Wright, Insular Auditor, is without authority of law to issue a warrant by himself, much less

a warrant covering amounts payable and chargeable against the apportionment of the City of Manila in the internal-revenue collections and special assessment imposed by Act No. 3065.

XXXI

That the respondent Vicente Carmona, Insular Treasurer, is likewise without any authority of law to honor, cash, or otherwise pay out of the funds belonging to the petitioner as aforesaid, any check, warrant, or order of payment issued by the respondent Ben F. Wright, Insular Auditor, or by any other officer, except only after judicial determination of the present controversy.

XXXII

That, to permit such an open violation of the law by the herein respondents, the aforesaid warrants corresponding to the allotments of funds of internal revenue pertaining to the petitioner, collected during the last quarter of 1924, as well as those which may thereafter be collected and may be payable to said petitioner would be issued and made payable to the Metropolitan Water District in violation of the law, and to the serious detriment of the petitioner's interests in particular and of the public interests in general.

XXXIII

That, as a result of the acts of the respondents above related, the petitioner has suffered and will suffer irreparable damages, has encountered and will encounter serious and considerable embarrassments and obstacles in the discharge of its corporate and governmental functions, unless said respondents are immediately restrained and enjoined from such acts by this Honorable Tribunal.

XXXIV

That the Metropolitan Water District is hereby made a party respondent to these proceedings for the reason that it has a direct interest in the subject-matter of this litigation, such interest being adverse to that of the petitioner, and because said Metropolitan Water District is and will be the only one benefited by the erroneous and unlawful acts which the respondents Collector of Internal Revenue, Insular Auditor, and

Insular Treasurer have been doing or are contemplating to do, and which constitute the object of the present petition.

XXXV

That there does not exist any other plain, speedy, and adequate remedy in the ordinary course of law whereby the petitioner could prevent the continuance of the infliction of damages which are or may be occasioned by the aforementioned acts of the herein respondents.

Wherefore, your petitioner respectfully prays this Honorable Court:

1. That it issue a writ of preliminary injunction against the respondent Collector of Internal Revenue ordering him, his deputies, agents, and employees to abstain from issuing any warrant and from making any payment in favor of the Metropolitan Water District of any amount whatsoever out of the funds pertaining to the petitioner as its share in the internal revenues collected by said Collector of Internal Revenue and in the collections made by reason of the enforcement of Act No. 3065, during the pendency of this litigation.

2. That it issue a writ of preliminary injunction against the respondent Ben F. Wright, Insular Auditor, his deputies, agents, and employees to abstain from issuing any warrant or give out any instruction or order of payment to the Insular Treasurer or any other official, in favor of the Metropolitan Water District, for any amount whatsoever chargeable against the petitioner's allotment in the internal-revenue collections and special tax collected under Act No. 3065, and further to abstain forever from interfering in the disposition of such allotment of the petitioner, during the pendency of this case.

3. That it issue a writ of preliminary injunction against the respondent Vicente Carmona, Insular Treasurer, ordering him, his deputies, agents, and employees to abstain from honoring, cashing, or otherwise paying any warrant, check, or order of payment issued by his co-respondents, Ben F. Wright, Insular Auditor, and Juan Posadas, Jr., Collector of Internal Revenue, whether acting individually or collectively, against the funds belonging to the petitioner as its allotment of the internal-revenue collections and of the special assess-

ments provided for in Act No. 3065, during the pendency of this case.

4. That, after the hearing of this case, it issue a writ of mandamus ordering the respondent Collector of Internal Revenue to issue in favor of the petitioner, and not to the Metropolitan Water District, all the warrants which he ought to issue for the share of the petitioner in the internal-revenue collections and in whatever other fiscal collections to which said petitioner is, by law, entitled.

5. That, after the hearing of this case, it issue a writ of permanent injunction against the respondent Metropolitan Water District ordering it, its manager, or any of its duly authorized agents or representatives, to abstain from claiming, charging, or otherwise collecting from the petitioner any amount for water service or for any other services in connection therewith, heretofore or which may hereafter be rendered said petitioner.

6. That, after the hearing of this case, it issue a writ of mandamus ordering the respondent Ben F. Wright, Insular Auditor, his deputies, agents, employees, or other persons acting in his stead to countersign and approve any check, warrant, or order of payment which the respondent Collector of Internal Revenue may issue in favor of the petitioner for such sums of money as represent its share or allotment in the internal-revenue collections and in the special tax imposed by Act No. 3065.

7. That it grant the petitioner such other remedy as to the court may seem just and equitable.

Manila, P. I., January 10, 1925.

GUILLERMO B. GUEVARA
City Fiscal, Attorney for the Petitioner

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS } *ss.*
CITY OF MANILA

Guillermo B. Guevara, after being first duly sworn, deposes and says: that he is the attorney for the petitioner in the above-entitled case; that he has read the foregoing amended petition; that each and every allegation of facts contained therein is true according to his best belief and information.

GUILLERMO B. GUEVARA

Subscribed and sworn to before me this the 10th day of January, 1925, in the City of Manila, Philippine Islands, by Guillermo B. Guevara, attorney for the petitioner herein, who exhibited to me his cedula No. F–48665, issued at Manila, P. I., on February 9, 1924.

V. ALBERT

Exhibit A

BUREAU OF AUDITS
MANILA

9th Indorsement

JANUARY 9, 1922

Respectfully returned to the Collector of Internal Revenue.

Under section 588 of the Administrative Code, the Collector of Internal Revenue is hereby authorized to deduct the total amount of ₱46,263.93, stated in the next preceding indorsement from the aggregate sum of ₱66,598.66 due the City of Manila for certain apportionment of taxes as described in the two treasury warrants Nos. 733622 and 733639 for ₱44,952.77 and ₱21,645.89, respectively, drawn by that bureau in favor of the City Treasurer of Manila, which are being returned, uncountersigned, under separate cover, for cancellation.

For the remainder of the amount due the City of Manila, or ₱20,334.73, after deducting the obligation of the city to that bureau as authorized above, the Collector of Internal Revenue is requested, under the same section of the Administrative Code, to draw a warrant in favor of the Metropolitan Water District, Manila, in settlement of part of the accounts of the latter against the City of Manila now long standing.

After making the above adjustments, it is desired that the City Treasurer be advised thereof thru this office.

E. M. FULLINGTON
Insular Auditor

By (Sgd.) R. E. FERNANDEZ
Acting Assistant Manager
Department of Provincial-Municipal Audits

A true copy:

(Sgd.) NAZARIO NADURATA
Chief, Records Section

216677——2

Exhibit B

NOVEMBER 10, 1924

SIR: After reviewing the papers regarding the controversy between the City of Manila and the Metropolitan Water District for the payment of water supplied by the latter to the public of this city, I found that you, following advices from the Insular Auditor, have been applying the share corresponding to the City of Manila, considered both as a municipality and as a province, from the proceeds of internal revenue, to the payment of bills for water consumption of the Metropolitan Water District, and that up to the present time some ₱681,733.79 pertaining to the City of Manila as proceeds of taxes, franchises, and internal-revenue collections has not been given to said city, in open violation of sections 485 to 497 of the Administrative Code, but instead has been unlawfully paid to the Metropolitan Water District.

Without prejudice to instituting the proper action against the Metropolitan Water District for the recovery of this amount, I have the honor to request that from now on you refrain from making further payments out of this fund belonging to the City of Manila, to the said District, and that a warrant corresponding to the last quarter past, July to September, 1924, be issued in favor of the City of Manila as per the specific provisions of section 497 of the Administrative Code.

In taking the stand above-mentioned, I had in mind not only the provisions of the Penal Code (art. 393) which declare it unlawful and criminal for any public officer who shall apply any fund or property in his possession to any public use other than that for which such fund or property was intended, but also the fact that sections 588 and 624 of the Administrative Code, upon which the Insular Auditor apparently bases his authority to make the readjustment, are entirely inapplicable to the present case.

Attention is invited, in this connection, to the fact that the share of the City of Manila out of the proceeds of taxes, franchises, and internal-revenue collections which come to the possession of the Collector of Internal Revenue by operation of law is a trust fund, and as such must be delivered,

with or without requirement, to the city as per specific provisions of section 497 of the Administrative Code.

In view of the vital importance of this case and the necessity of settling this controversy as soon as possible, it is requested that this communication be answered with the least possible delay in order that this office may take the proper steps towards the protection of the city's interests.

Very respectfully,

GUILLERMO B. GUEVARA
City Fiscal

The COLLECTOR OF INTERNAL REVENUE
Manila, P. I.

I hereby certify that the above correspondence addressed to the Collector of Internal Revenue was forwarded to his Office on November 11, 1924 and receipted by one Mr. L. Endozo.

PAZ C. DE ASPILLERA
Record Clerk, City Fiscal's Office

MANILA, *January 8, 1925*

Exhibit C

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF THE INTERIOR
BUREAU OF INTERNAL REVENUE
OFFICE OF THE COLLECTOR
MANILA

JANUARY 5, 1925

The CITY FISCAL
Manila

SIR: In connection with my communication to you dated January 3, 1925, I have the honor to advise that, in view of the 1st Indorsement of the Insular Auditor addressed to this Office and dated December 31, 1924, this Office will, after a period of 10 days counted from this date, proceed to issue warrants for the sums of ₱21,880.57 and ₱3,856.04 in favor of the Metropolitan Water District covering internal-revenue apportionment and apportionment under Act No. 3065, both

pertaining to the fourth quarter of the year 1924. This information is given so that, if desired, the City of Manila may institute any judicial action that it may deem proper and expedient. This communication supersedes that addressed to you on January 3, 1925.

Very respectfully,

(Sgd.) JUAN POSADAS, Jr.
Collector of Internal Revenue

Exhibit D

[Translation from Spanish]

PHILIPPINE LEGISLATURE
HOUSE OF REPRESENTATIVES
OFFICE OF THE SECRETARY
MANILA

JANUARY 6, 1925

I hereby certify that Bill No. 1596, introduced by the Special Committee on House Bill No. 1566 of Representatives Generoso and Santos (A.), and which is now Act No. 2832, originated in the House of Representatives and was approved in Spanish by the Fourth Philippine Legislature.

(Sgd.) FELICIANO GOMEZ
Secretary, House of Representatives

On January 8, 1925, the Supreme Court issued an order of injunction, which was superseded by another order dated January 10, 1925, which reads as follows:

[CAPTION AND TITLE OMITTED]

ORDER OF INJUNCTION

To the INSULAR TREASURER, HIS DEPUTIES, AGENTS, AND EMPLOYEES, *Manila, P. I.*

GREETINGS: By virtue of the order on this date issued by the Honorable Justice, Acting in Vacation, you and each of you are hereby commanded to abstain from honoring, cashing or otherwise paying any warrant, check, or order of payment issued by his correspondents, Ben F. Wright, Insular Auditor, and Juan Posadas, Jr., Collector of Internal Revenue, whether acting individually or collectively, against the funds be-

longing to the petitioner as its allotment of the internal-revenue collections and of the special assessments provided for in Act No. 3065, during the pendency of this case.

Fail not under penalty of the law.

Given by the Honorable James A. Ostrand, Associate Justice of the Supreme Court of the Philippine Islands, Acting in Vacation, this 10th day of January, 1925.

V. ALBERT
Clerk, Supreme Court, P. I.

On January 29, 1925, the respondents by their attorney filed in the office of the Clerk of the Supreme Court the following demurrer to the amended petition:

[CAPTION AND TITLE OMITTED]

DEMURRER

Comes now the undersigned in behalf of the defendants in the above-entitled action, and demurs to the amended petition for mandamus on the following grounds:

I

That the court has no jurisdiction of the subject of the action, in that—

Under the provisions of section 24 of the Act of Congress of August 29, 1916, popularly known as the Jones Law, and section 588 of the Administrative Code of 1917, as amended by Act No. 3066, the defendant Insular Auditor has exclusive jurisdiction over the settlement of accounts between the executive branches of the Philippine Government and the different bureaus, offices, provinces, and municipalities of the Philippine Islands. The Metropolitan Water District is one of the executive branches of the Government, and is, furthermore, a province within the meaning of sections 588 and 593 of the Administrative Code, as amended by Act No. 3066.

II

That the petition does not state facts sufficient to constitute a cause of action; for

1. The petitioner has another plain, speedy, and adequate remedy in the ordinary course of law, without resorting to mandamus proceedings. Sections 24 and 25 of the Jones Law

and sections 653 and 656 of the Administrative Code of 1917 provide the means for appealing from the decision of the Insular Auditor. It is not alleged in the petition that the petitioner has exhausted said remedy;

2. The question of title of ownership to property is raised by the petition (see paragraphs XVII and XXII thereof) and is necessarily involved in the present action; and

3. The petitioner is not entitled to free water service from the Metropolitan Water District; for—

(*a*) Section 9 of Act No. 2832, the charter of the Metropolitan Water District provides that said entity "shall *own* and *control* all the sewer and water distributing systems of the City of Manila and of the municipalities comprising the District and shall charge and collect a *uniform* rate for all services rendered, whether to any person, *corporation*, firm, *governmental body, municipal entity*, religious or charitable institution" (italics ours); and pursuant to section 8 of the same Act the District Board received and assumed in behalf of the District "all assets and liabilities pertaining to the sewerage and waterworks system of the City of Manila, together with the sewerage and waterworks sinking funds, etc."

(*b*) The waterworks and sewerage system is of a public nature and was formerly administered by the City of Manila as an agency of the State but was never owned by it in its private or proprietary capacity.

(*c*) The Philippine Legislature had full power to dispose of and administer said system by any suitable agency; and in Act No. 2832 gave the ownership, control, and administration of said system to the Metropolitan Water District, with the duty to collect a uniform rate for all services rendered to municipal entities, among others, without excepting the City of Manila.

(*d*) While governmental bodies, bureaus, offices, provinces, and municipalities are exempt from taxation, they are all subject, without exception, to the charges and fees imposed by each for supplies furnished or services rendered by it to the others. This practice is perfectly legal and is in accordance with the best business methods.

(*e*) The greater part of the petition consists of conclusions and inferences, both of law and of fact, matters of evidence,

surplusage, and irrelevant matter, which are not deemed admitted by a demurrer (Alzua and Arnalot *vs.* Johnson, 21 Phil., 308, 309), and we respectfully pray the court to wholly disregard them.

In view of the foregoing, it is prayed that, after hearing, the preliminary injunctions issued be dissolved and the petition dismissed with costs.

Manila, January 29, 1925.

ANT. VILLA-REAL
Attorney-General

Received copy this 29th day of January, 1925.

GUILLERMO B. GUEVARA
City Fiscal, Attorney for the Petitioner

After hearing argument on the above demurrer, the Supreme Court on September 22, 1925, overruled same by the following order:

In case R. G. No. 23551, The City of Manila *versus* Juan Posadas, Jr., etc., *et al.*, the court ordered that the demurrer interposed to the complaint is hereby overruled, and the respondents are required to answer within ten days from notice hereof. Messrs. Justices Johnson and Ostrand dissented. Mr. Justice Villa-Real did not take part.

On October 1, 1925, the respondents by their attorney filed with the Supreme Court their exception to the above order, as follows:

[CAPTION AND TITLE OMITTED]

EXCEPTION

Come now the respondents in the above-entitled action and take exception to the resolution of this Honorable Court of September 22, 1925, overruling the demurrer interposed by them.

Manila, October 1, 1925.

DELFIN JARANILLA
Attorney-General

Received copy this 1st day of October, 1925.

GUILLERMO B. GUEVARA
City Fiscal, Attorney for the Petitioner

On October 1, 1925, the respondents by their attorney filed with the Supreme Court the following:

[CAPTION AND TITLE OMITTED]

ANSWER

In answer to the petition in the above-entitled action, the respondents allege:

I

That they admit the allegations contained in the first and second paragraphs of the petition; and

II

That they deny, all and singular, the allegations contained in the other paragraphs of the petition, except those that in the following special defense are specifically admitted.

SPECIAL DEFENSE

As a special defense, the respondents aver:

1. That when the water and sewerage system referred to in the petition was under the administration of the sewer and waterworks division of the Engineering and Public Works Department of the City of Manila, the other departments of the city paid for water and other services furnished to them by said division;

2. That the Metropolitan Water District, since its organization in the year 1919 up to the present, has been furnishing water and rendering water services to the Government of the City of Manila;

3. That the government of the City of Manila has been voluntarily paying to the Metropolitan Water District for some of the water and water services above-mentioned in the amounts, for the purposes, and for the period specified in the statement marked Exhibit A attached to this answer and made a part thereof;

4. That on January 28, 1924, a supposed majority of the Board of Directors of the Metropolitan Water District passed a resolution exempting the government of the City of Manila from fees for the water consumed by the fire and public hydrants installed in said city; but upon appeal duly taken by the minority of said Board to the Governor-General, through the Secretary of the Interior, under the provisions of section 4 of Act No. 2832, as amended by section 2 of

Act No. 3109, the Governor-General in an indorsement dated September 18, 1924, reversed the above resolution of the alleged majority of the Board and decided "that the City of Manila shall pay for all services rendered by the Metropolitan Water District." A copy of the correspondence in regard to the above resolution, appeal, and decision, marked Exhibit B, is hereto attached and made a part hereof;

5. That on August 11, 1924, a majority of the Board of Directors of the Metropolitan Water District approved a resolution to the effect that the Secretary of the Interior be "requested to recommend to the Legislature the amendment of the Organic Act of the Metropolitan Water District in such a way as to relieve the City of Manila from payment for fire hydrant rentals, and for water and service maintenance charges of public hydrants"; but the minority members of the Board duly appealed from this resolution to the Governor-General, through the Secretary of the Interior, under the provisions of section 4 of Act No. 2832, as amended by section 2 of Act No. 3109, and the Governor-General rendered the same decision mentioned in the next preceding paragraph. A copy of the correspondence referring to this matter, marked Exhibit C, is hereto attached and made a part hereof;

6. That on November 17, 1924, the Board of Directors of the Metropolitan Water District unanimously approved Resolution No. 21 (*a*), entitled "A resolution to fix charges, and the rates thereof, for all services rendered by the Metropolitan Water District," as shown by the excerpts, marked Exhibit D, attached hereto and made a part hereof; that section 3 of said resolution provides that—

"Unmetered water consumption shall be restricted to the following services and the charges therefor shall be at the following rates:

"Street sprinkling within the limits of the City of Manila, five centavos per cubic meter.

"Street sprinkling in any other municipality of the District, ten centavos per cubic meter. The amount of water consumed for street sprinkling shall be reported monthly and certified as to its correctness by the municipal president, or some official designated by him for this purpose.

"Park sprinkling, where no meter can be conveniently pro-

vided, five centavos per cubic meter for such amount of water as shall be determined monthly by estimate based upon reports by the park officials.

"Public hydrants, in the city limits, five centavos per cubic meter; outside of the city limits, ten centavos per cubic meter. The amount of water shall be determined monthly by estimate based on an average of the reading of such meters, on public hydrants, as are equipped with meters.

"Storm drains and gutter flushing, four centavos per cubic meter for the estimated amount of water consumed monthly."

Section 4 of said resolution provides that—

"The charges for fire hydrants and automatic sprinklers, shall be as follows:

"For each public fire hydrant, one hundred and twenty pesos per annum.

"For each private fire hydrant, one peso per month.

"For two hundred sprinklers or less, forty pesos per annum; for every additional sprinkler over two hundred and up to one thousand, twenty centavos each per annum; for every additional sprinkler over one thousand and up to two thousand, fifteen centavos each per annum; and for every additional sprinkler over two thousand, ten centavos each per annum."

7. That the Meropolitan Water District has been sending bills to the government of the City of Manila for the collection of the value of the water and water services which it had been furnishing to said city; but while said government has been paying some of those bills it has refused to pay others;

8. That the Metropolitan Water District advised the Insular Auditor of the refusal of the government of the City of Manila to pay the above-mentioned bills, requesting the latter to enforce the adjustment and settlement of said outstanding accounts under the provisions of section 588 of the Administrative Code, as amended by Act No. 3066;

9. That the Insular Auditor, after due study of the above claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that said claim was just, legal, and proper;

10. That the Insular Auditor then made demand on the City of Manila for the payment and settlement of said claim, advising said city that, upon failure of payment, he would exercise the power vested in him by section 588 of the Administrative Code, as amended by section 1 of Act No. 3066, but the city refused to comply with said demand;

11. That thereupon the Insular Auditor instructed the Collector of Internal Revenue that thereafter and until further notice, all warrants covering the internal-revenue collections allotted to the City of Manila be drawn by said Collector in favor of the Metropolitan Water District instead of said city as theretofore;

12. That, by virtue of an arrangement between the Insular Auditor and the Collector of Internal Revenue for the purpose of putting the present question to a test, the latter officer issued warrant No. 636, dated December 9, 1924, for the sum of ₱21,880.57 and warrant No. 638 dated December 23, 1924, for the sum of ₱3,856.04 both covering the internal-revenue allotment of the City of Manila, in favor of said city instead of the Metropolitan Water District, and the Insular Auditor, pursuant to the same arrangement, refused to countersign said warrants and returned them, unsigned by him, to the Collector of Internal Revenue;

13. That on January 5, 1925, the Collector of Internal Revenue, in answer to a communication from the City Fiscal, advised the latter that, pursuant to subsequent instructions from the Insular Auditor, he would, within ten days from said date, proceed to issue the warrants for the above-mentioned sums, in favor of the Metropolitan Water District, but due to the preliminary injunction issued in the present case the Collector of Internal Revenue was prevented from doing so.

In view of the foregoing, it is respectfully prayed that the petition be dismissed with costs against the petitioner.

Manila, P. I., October 1, 1925.

DELFIN JARANILLA
Attorney-General

Received copy this 1st day of October, 1925.

GUILLERMO B. GUEVARA
City Fiscal, Attorney for the Petitioner

Exhibit A

Statement of services rendered by the Metropolitan Water District to various departments of the City of Manila, "voluntarily" paid by the City Treasurer

Bill No.	Period of service	Nature of service	Markets and slaughter-houses	Offices, schools, police, fire, reformatories, stables, etc.	Parks and cemeteries	Plumbing	Date paid	Check No.
849	January, 1922–March, 1922	Water and sewer		P19.35			11-22-22	4191
902	January, 1922–June, 1922	Maintenance of public hydrants				P1,960.24	10-11-22	3391
917	April, 1922–June, 1922	Water, sewer, etc		1,070.46			do	3351
918	do	do		39.13			do	Do.
920	do	do		48.86			do	Do.
922	do	do		317.28			do	3920
925	do	Installation of water meter				159.54	do	Do.
1017	July, 1922–September, 1922	Maintenance of public hydrants				417.13	11-22-22	4191
1033	September 15, 1922	Installation of public hydrants				297.78	do	Do.
1092	July, 1922–September, 1922	Water, sewer, etc		28.98			do	4203
1093	do	do		45.50			12- 9-22	4267
1095	do	do		262.61			11-22-22	4300
1096	do	do		1,228.36			do	4239
1121	October 11, 1922	Removal of public hydrants				56.17	1-29-23	Do.
1137	October 1–31, 1922	Maintenance of public hydrants				163.85	do	4758
1145	November 1–30, 1922	do				192.66	do	Do.
1168	August 28, 1922	Installation of public hydrants				86.41	do	Do.
1212	October, 1922–December, 1922	Water, sewer, etc		20.13			do	Do.
1224	do	do		890.59			do	Do.
1225	do	do		250.57			do	4798
1236	December 4, 1922	Changing location of public hydrants				27.07	do	4774
1389	January, 1923–March, 1923	Water, sewer, etc		114.70			do	4798
1393	do	do		2,787.19			12-31-24	11098
1398	do	do			1,019.49		1-15-25	11244
1550	April, 1923–June, 1923	do			1,334.23		7-25-24	9613
1553	do	do		21.20			do	Do.
1566	do	do		1,516.84			12-31-24	11098
1631	July, 1923–September, 1923	do			1,489.83		1-15-25	11244
1655	do	do		32.00			7-25-24	9613
1718	do	do		3,007.51			12-31-24	11098
1720	do	do		31.75			1-15-25	11244
1802	October, 1923–December, 1923	do		17.30			12-24-24	11043
1829	do	do		2,716.42			12-31-24	11098
							1-15-25	11244

1830	....do	....do			1,502.79		7-25-24	9613
1836	....do	....do		20.80			12-24-24	11043
1879	January 1-31, 1924	....do				290.85	7-25-24	9613
1919	February 1-29, 1924	Maintenance of public hydrants				249.83	....do	Do.
1937	March 1-31, 1924	....do				470.63	....do	Do.
2010	January, 1924-March, 1924	....do		3,112.72			8-14-24	9830
2024	....do	Water, sewer, etc		1,937.31			11- 4-24	10579
2025	....do	....do	₱2,626.11				9-18-24	10228
2030	....do	....do		29.40			8-14-24	9830
2031	....do	....do		737.50			10-17-24	10483
2033	....do	....do		43.09			8-14-24	9830
2034	....do	....do		10.05			....do	Do.
2036	....do	....do		828.97			....do	Do.
2039	....do	....do		81.00			9-18-24	10228
2137	July 28, 1924	Removal of public hydrants					10-17-24	10483
2151	April, 1924-June, 1924	Water, sewer, etc		711.65		426.80	11- 4-24	10579
2152	....do	....do		249.15			10- 7-24	10303
2153	....do	....do		627.27			12-24-24	11043
2162	....do	....do		9.00			....do	11043
2163	....do	....do		35.42			9- 1-24	10062
2166	....do	....do		33.38			12-24-24	11043
2277	....do	....do		15.00			12- 2-24	10825
2351	July, 1924-September, 1924	....do		19.64			....do	10849
2352	....do	....do		66.51			12-15-24	10977
2354	....do	....do		46.73			12- 2-24	10830
2356	....do	....do		817.20			12- 2-24	10849
2358	....do	....do		305.09			12-15-24	10977
2364	....do	....do		981.46			....do	Do.
2406	....do	....do		3,154.19			....do	Do.
	Total		2,626.11	28,339.26	5,346.31	4,798.96		

A. GIDEON
Manager, Metropolitan Water District

Exhibit B

Copy of the correspondence relative to the appeal of the minority members of the Metropolitan Water District Board against the resolution of said Body exempting the City of Manila from the payment of rental and water charges for the fire hydrants and public hydrants installed in the said city.

"*Resolved*, That it is the sense of the District Board that the City of Manila is under no legal duty to pay any rental or water charges for the fire or public hydrants installed in said city, and that any resolution heretofore adopted concerning the collection or reduction of rentals or water charges for said fire and public hydrants be, and it is hereby, annulled and given no effect."

(Passed by the Metropolitan Water District Board in its meeting held January 28, 1924.)

JANUARY 29, 1924

The Honorable, the SECRETARY OF THE INTERIOR
(Thru the Metropolitan Water District Board)
Manila.

SIR: In pursuance of the provisions of section 2 of Act No. 3109, which amended section 4 of Act No. 2832, the undersigned member of the Metropolitan Water District Board hereby appeals from the resolution of a majority of the Board of Directors passed on January 28, 1924, as follows:

"*Resolved*, That it is the sense of the District Board that the City of Manila is under no legal duty to pay any revenue for the fire and public hydrants installed in said city, and that any resolution heretofore adopted concerning the collection or reduction of rentals for said fire and public hydrants be and it is hereby annulled and given no effect."

The reasons for this appeal are as follows:

First. The Metropolitan Water District having been created by Act No. 2832, as amended by Act No. 3109, of the Philippine Legislature is not competent to question the legality of such Acts and is bound by their provisions.

Section 9 of Act No. 2832 provides: "The Metropolitan Water District shall own and control all the sewer and water distributing systems of the City of Manila and of the municipalities comprising the District and shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution." The District Board cannot, therefore, render free service to the City of Manila, nor can it exempt the City of Manila from payment for services rendered to it when it is charging and collecting for such services from other municipalities in the District. The undersigned is of the opinion, therefore, that the resolution passed by the majority of the Board is illegal, being contrary to section 9 of Act No. 2832 above quoted.

Second. The undersigned is of the opinion that even tho it were legally possible to do so, it is contrary to public policy to exempt the City of Manila from the payment of services rendered to it. The expenses of the District must be paid from its income. The District is now undertaking to develop a new and larger supply of water for the District. Sanitation and public health make it advisable, as soon as an adequate supply of water is developed, to use every endeavor to extend water and sanitary installations to the homes of the poorer people of the District. The estimates which have been made show that, with the development of the new proposed water supply, the entire income of the District will be required to meet its increased fixed charges and, in fact, for a short time in 1932 or 1933, that a deficit will be incurred. If, therefore, the City of Manila is to be exempted from the payment of services rendered to it by the District, it will be necessary for the District to raise its rates not only to residents of the City of Manila, but also to residents of other municipalities of the District, and at a time when every endeavor should be made to increase water and sanitary installations by the poorer people.

It seems to be the opinion of some of the officials of the government of the City of Manila that charges for fire and public hydrants were not previously paid by the city. In this the undersigned is of the opinion that such officials are misinformed. When the water and sewer systems were

under the direct control of the City of Manila, its expenses and its fixed charges were met by appropriations from public funds. The income from the water and sewer systems was insufficient to meet such expenses and fixed charges. The undersigned has been informed that this deficit amounted annually to approximately ₱500,000, which was met by appropriations. The City of Manila is not, therefore, incurring new expenses when it is called upon to pay for services rendered by the District.

The City Treasurer has pointed out that the District has an actual surplus on December 31, 1923, of ₱1,579,621.91. He has, however, overlooked the fact that this surplus is made up principally of capital assets which have been acquired by payments into the sinking fund of the outstanding bond issue, and further that the greater part of this surplus consists of indebtedness of the City of Manila to the District. Actual cash on hand as of December 31, 1923, was but about ₱500,000. Furthermore, as pointed out above, there can be no reduction in the income of the District without resulting in a serious deficit when it becomes necessary to make payments of fixed charges against the bond issues which it will be necessary to emit for the purpose of extending the system to give an adequate supply of water to the residents of the District.

The undersigned also is of the opinion that those favoring the resolution have confused the obligations of the City of Manila to serve its residents with the purposes and obligations of the Metropolitan Water District. It undoubtedly is an obligation of the City of Manila to give fire protection and to render other services in which water is used; for those services the City of Manila collects taxes. The fact that no direct charge is made by the city for some of the services so rendered does not make it incumbent upon the Metropolitan Water District to render such services to the city without charge. In fact, the District is under the direct obligation to charge the city for services rendered by the District, and this obligation is fixed by law and can be avoided neither by the District nor by the city.

Third. The resolution as passed by the majority of the Board did not receive the number of votes required by law.

Section 2 of Act No. 3109, which amended section 4 of Act No. 2832, provides that "four affirmative votes shall be necessary for the adoption of any resolution or motion, except as herein otherwise provided." Five members were present at the meeting held on January 28, 1924: two members voted against the resolution. The resolution did not, therefore, receive four affirmative votes, altho in an attempt to give the required number of votes Mr. Artiaga voted twice, once in his capacity as Acting Mayor and again in his capacity as City Engineer. The undersigned is of the opinion that this was improper and illegal and that, therefore, the resolution did not receive the number of votes required by law.

(Sgd.) H. B. POND
Member, Metropolitan Water District Board

JANUARY 28, 1924

SIR: Pursuant to the provisions of section 4 of Act No. 3109, amending some sections of Act No. 2832, the undersigned, member of the Metropolitan Water District Board in representation of the Director of Public Works, hereby appeals from the decision handed down on January 28, 1924, by the majority of said Board on the claims of the Metropolitan Water District against the City of Manila for water service. On this controversy, which has been pending decision for the last four years, the Attorney-General rendered a very comprehensive and detailed opinion, copy hereto attached, on November 1, 1919, and the undersigned wishes to submit same in support of his dissenting vote in the meeting and of the appeal hereby presented. The points of the undersigned, discussed in detail in the cited opinion of the Attorney-General, are hereby discussed in brief.

The City of Manila insistently refuses to settle the claim of the Metropolitan Water District against it on the "ground that it is still the owner of all the sewer and water distributing system within its limits because it has never been compensated for the taking away of its proprietary rights in and to such system, and that if this were the intention of the Legislature in passing Act No. 2832, said Act is unconstitutional, being contrary to the provisions of section 3 of the Jones Law."

It is admitted that the sewer and water systems belonged, before their transfer to the Metropolitan Water District, to the City of Manila, but the city owned the property not in its corporate capacity but as an agency of the Government. This fact is so because the system is not property of private but of public nature and as such the Legislature of the land can transfer it to the possession and control of another agency of the Government, in this case the Metropolitan Water District—without any compensation to the former owner. Moreover, when the City of Manila was authorized to float bonds by Act No. 1323 for the construction of the waterworks system the Insular Government was in effect the guarantor of the payment of the bond indebtedness.

The evident intention of the Philippine Legislature in passing Act No. 2832, is to transfer the administration and control of the system to the Metropolitan Water District without compensation to the City of Manila. The city's claim to the effect that the law, if that were the intention of the Legislature, is unconstitutional being against the provision of the Jones Law, is untenable, because the overwhelming weight of authorities is to the effect that the Legislature can transfer the control and administration of a public water system without any compensation to the former administrator. The case of Doil *versus* McIntyre (7 Houston 44, 40 Am. St. Rep. 109) which is cited by the Attorney-General in one of his memorandums applies four square to this particular case. In that case the Legislature of Delaware passed a law creating for the City of Wellington a Board of Water Commissioners composed of three citizens, to which Board should be transferred a waterworks system which at that time belonged to and was under the control of the said city, *authorizing the Board at the same time to charge the city for water* used or consumed by it. The constitutionality of said law was attacked on the ground that it deprived the city of its property without due process of law. The Supreme Court of Delaware held that the law was constitutional and, among other things, said:

"Even if the waterworks system of the city were, before the passage of the law establishing a "Board of Water Commissioners" under the control, administration, and care of the municipal council in whatever capacity, * * * the

Legislature had the power to alter, or change the control, administration, and care of the system whenever it deemed it convenient, because such change of control or administration, as long as it does not amount to change of the purpose or object for which the system was established, does not affect any right acquired by the city or the municipal corporation against the State."

Act No. 2832 being constitutional the Metropolitan Water District can charge the City of Manila for the use of the system and water under section 9 of said Act. In fact, the District is by duty bound to charge the City of Manila for water service because an exemption granted to the city will be a discrimination against other consumers of water and users of the system. The fact that at the time the system was under the control of the city the other departments of the municipal government did not pay to the department in charge of the waterworks for the water consumed by them has no material bearing on the question and the Metropolitan Water District is under no obligation to follow that practice, which at any rate is extremely unbusinesslike.

Very respectfully,

(Sgd.) E. QUISUMBING
Member, Metropolitan Water District Board

The Honorable, the SECRETARY OF THE INTERIOR
(Thru the Metropolitan Water District Board)
Manila.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF THE INTERIOR
METROPOLITAN WATER DISTRICT
MANILA, P. I.

1st Indorsement

JANUARY 30, 1924

Respectfully forwarded to the Honorable, the Secretary of the Interior, Manila, inviting attention to the two attached letters of Mr. Horace B. Pond and Mr. Emilio Quisumbing, members of the Metropolitan Water District Board, appealing from the resolution adopted by the majority at the special meeting held on the 28th instant.

Enclosed herewith are all papers bearing upon the discussion of this matter.

By direction of the District Board:

(Sgd.) JOSE F. RAMOS
Secretary-Treasurer

The foregoing appeal of the minority members of the Metropolitan Water District Board was forwarded by the Secretary of the Interior to the Governor-General by indorsement of May 16, 1924, and the same was decided by the Governor-General simultaneously with the other appeal on the same subject, by indorsement dated September 18, 1924, which reads as follows:

"OFFICE OF THE GOVERNOR-GENERAL OF THE PHILIPPINE ISLANDS

3rd Indorsement

"MANILA, September 18, 1924

"Respectfully returned to the Honorable, the Secretary of the Interior, Manila, hereby sustaining, under the provisions of Act No. 3109, section 4, the within appeal of the minority of the Board of Directors of the Metropolitan Water District. It is hereby decided that the City of Manila shall pay for all services rendered by the Metropolitan Water District. This decision is based not only upon justice and equity but upon section 9 of Act No. 2832, which states that the Metropolitan Water District shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution.

(Sgd.) "LEONARD WOOD
"Governor-General"

A. GIDEON
Manager, Metropolitan Water District

Exhibit C

Copy of the correspondence relative to the appeal of the minority members of the Metropolitan Water District Board against the resolution of said Body exempting the City of

Manila from payment of fire hydrant rentals and maintenance charges of public hydrants.

AUGUST 12, 1924

The Honorable, the SECRETARY OF THE INTERIOR
(Thru the Metropolitan Water District Board)
Manila.

SIR: In pursuance of the provisions of section 2 of Act No. 3109, which amended section 4 of Act No. 2832, the undersigned members of the Metropolitan Water District Board hereby appeal from the resolution of a majority of the Board of Directors passed on August 11, 1924, to the effect that the said Board petition the Philippine Legislature to amend section 9 of Act No. 2832 so as to exempt the City of Manila from the payment for services rendered to it in connection with the maintenance and operation of public hydrants and fire hydrants.

Section 9 of Act No. 2832 reads as follows: "The Metropolitan Water District shall own and control all the sewer and water distributing systems of the City of Manila and of the municipalities comprising the District and shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution."

The Board on January 28, 1924, passed a resolution to the effect that the City of Manila was under no legal duty to pay any revenue for fire and public hydrants installed in said city and cancelled resolutions previously adopted concerning rentals for said fire and public hydrants. From that resolution the undersigned appealed to you in accordance with the law, which appeal we understand was sustained on the ground that under the provision of section 9, Act No. 2832, the City of Manila could not legally be exempted from such tax.

The present action of the majority members of the Board constitutes another attempt to secure exemption previously claimed.

While we recognize that the officials of the City of Manila may quite properly petition the Legislature regarding such legislation as they may consider to be for their best interests, nevertheless we do not consider the action now taken proper

when taken by the majority as members of the Board of Directors of the Metropolitan Water District.

The Metropolitan Water District is at present earning a surplus over and above operating expenses and interest and sinking fund charges on the bonds at present outstanding of approximately ₱170,000 per annum. No provision is, however, made in the accounts of the District for depreciation. The present water supply system of the District has now been installed for nearly twenty years and the time is rapidly approaching when the cost of replacements and repairs thru depreciation will tend considerably to increase. The building up of a surplus is therefore essential if the service rendered by the District is to be maintained and the supply system kept in proper repair.

If the City of Manila is exempted from the charges as proposed, the loss of revenue to the District will be approximately ₱170,000 per annum, thus resulting in no surplus for the District.

Our appeal is also based on the fact that such action would constitute a discrimination in favor of the City of Manila and is against the other municipalities served by the District, as under the law it would still be necessary to charge such municipalites for similar services.

Our appeal is also based on the fact that efforts are now being made to secure the necessary funds for the purpose of increasing the water supply of the District, which increase is absolutely essential for the rendering of proper service to the District and to supply the ever increasing needs for water. The extension to the system will add approximately one million pesos per annum to the expenses of the District for interest and sinking fund charges and additional operating expenses. While the consumption of water is increasing, thus increasing the income of the District, nevertheless the increase will not be at a rate sufficient to meet from current income the increased charges, so that the surplus which has been accumulated during the past few years of operation will, according to the best possible estimates, be entirely depleted and a small deficit may even result in the years 1934 and 1935, after which time the District again should be self-sustaining.

If, therefore, the District is deprived of income from the City of Manila amounting to approximately ₱170,000 per

annum, it will not be possible for the District from its present resources to meet the additional charges which will be incurred in the extension of the system.

The only alternative will be an increase in rates to private consumers and this at a time when a larger supply of water will make necessary a campaign for the increasing of private installations among the poorer people of the District, who naturally would be very greatly benefited thereby. The increased use of a supply of potable water by the poorer people would greatly improve health conditions in the District.

The City of Manila is now being charged for services actually rendered to it by the District, and which services the city, and not the District, is under obligations to render to its inhabitants.

We, therefore, submit our appeal from the decision of the majority of the Board, on the grounds above stated.

(Sgd.) A. D. WILLIAMS
H. B. POND
Members, Metropolitan Water District Board

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF THE INTERIOR
METROPOLITAN WATER DISTRICT
MANILA, P. I.

1st Indorsement

AUGUST 14, 1924

Respectfully forwarded to the Honorable, the Secretary of the Interior, inviting attention to the attached appeal from the resolution approved by the Majority of the Metropolitan Water District Board at the meeting held on the 11th instant (5.13 to 6.10 p. m.), requesting that the Organic Act (No. 2832) of the Metropolitan Water District be amended so that the City of Manila may be relieved from the payment for services rendered by the Metropolitan Water District in connection with the operation and maintenance of public and fire hydrants.

Certified copy of the resolution in question is herewith enclosed.

As yesterday was a holiday, these papers could not be forwarded earlier.

By direction of the District Board:

(Sgd.) JOSE F. RAMOS
Secretary-Treasurer

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF THE INTERIOR
METROPOLITAN WATER DISTRICT
MANILA, P. I.

Extracts from the records of the Metropolitan Water District:

At a regular meeting of the Metropolitan Water District Board held at the Mayor's Office, City Hall, Manila, P. I., on the 11th day of August, 1924, at 5 p. m., in accordance with the By-laws, a *quorum* being present, the City Treasurer moved and Mr. Garrido, Acting City Engineer, seconded, to adopt the following

"RESOLUTION

"WHEREAS it is the sense of the District Board that the City of Manila should not be required to pay to the Metropolitan Water District for public services which were formerly rendered by the city free of charge;

"WHEREAS, due to its present financial condition, the City of Manila is apparently unable to meet all its obligations to the Metropolitan Water District; Now, therefore, be it

"*Resolved*, That the Honorable, the Secretary of the Interior be, and hereby is, requested to recommend to the Legislature the amendment of the Organic Act of the Metropolitan Water District in such a way as to relieve the City of Manila from payment for fire hydrant rentals, and for water and service maintenance charges of public hydrants."

Messrs. Pond and Williams objected to the approval of this resolution, stating among other things that it would be a very poor policy (1) to establish a discrimination in favor of the City of Manila and against the other municipalities of the District, (2) to encourage the waste of water, and (3) to make the consumers of the District pay for services which constitute a legitimate charge against the city. After dis-

cussion the motion was put to a vote with the following result: Messrs. Garrido, Alfonso, Montenegro, and the President voted 'Aye,' while Messrs. Bond and Williams voted 'Nay.' The resolution having been declared approved, Mr. Pond forthwith expressed the intention of the minority to appeal therefrom to the proper authorities in accordance with the provisions of existing laws, and the Secretary was ordered to forward such appeal with all pertinent papers. * * *"

I, Jose F. Ramos, Secretary-Treasurer of the Metropolitan Water District, hereby certify that the foregoing extracts are true copies from the minutes of the said meeting of the Metropolitan Water District Board.

(Sgd.) JOSE F. RAMOS
"Secretary-Treasurer

DEPARTMENT OF THE INTERIOR
MANILA
2nd Indorsement
AUGUST 15, 1924

Respectfully forwarded to His Excellency, the Governor-General, reiterating our recommendation submitted on May 16, 1924, to His Excellency, on the same matter treated in the within appeal of the minority members of the Metropolitan Water District Board quoted hereunder:

"SETTLEMENT OF THE LONG STANDING CONTROVERSY BETWEEN THE CITY OF MANILA AND THE METROPOLITAN WATER DISTRICT WITH REGARD TO THE PAYMENT OF WATER CONSUMED THRU THE PUBLIC HYDRANTS.

"Attention in this connection is respectfully invited to previous correspondence forwarded to that office by our sixth indorsement dated March 22, 1924, relative to this matter, specially to the recommendation of the Attorney-General that this controversy be submitted to the Philippine Legislature for final settlement inasmuch as a question of policy is involved. The history of this controversy as well as the reasons of the City of Manila in refusing to pay for water consumed thru the public hydrants and those of the Metropolitan Water District in insisting in its claim for payment, are all well explained in said correspondence and need not be repeated here. We simply want to make it clear that in view of the

poor finances of the City of Manila which render it incapable to undertake needed public improvements; of the considerable amount that the City of Manila will have to pay for water consumed in its public hydrants for street sprinkling, for extinction of fire, and other purposes; of the discontinuance of the Insular aid given by the Insular Government to the city, both of which factors reduce the capacity of the City of Manila to undertake important public improvements, specially the construction of school buildings; and in view of the fact that the city made large investments when the system was yet under its management, it seems to this Department that, on equitable grounds, the City of Manila should be exempted from paying for water consumed thru the public hydrants, at least, until its revenue collections improve, or, say, until after a period of five years."

(Sgd.) FELIPE AGONCILLO
Secretary of the Interior

OFFICE OF THE GOVERNOR-GENERAL OF THE PHILIPPINE ISLANDS

3rd Indorsement

MANILA, *September 18, 1924*

Respectfully returned to the Honorable, the Secretary of the Interior, Manila, hereby sustaining, under the provisions of Act No. 3109, section 4, the within appeal of the minority of the Board of Directors of the Metropolitan Water District. It is hereby decided that the City of Manila shall pay for all services rendered by the Metropolitan Water District. This decision is based not only upon justice and equity but upon section 9 of Act No. 2832, which states that the Metropolitan Water District shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution.

(Sgd.) LEONARD WOOD
Governor-General

Certified copies:

J. C. CARPIO
Acting Chief Clerk, Metropolitan Water District

MANILA, P. I., *September , 1925*

Exhibit D

Excerpts from the minutes of the regular meeting No. 9 of the District Board, Metropolitan Water District, held on November 17, 1924.

PRESENT

Mayor (Hon. M. Romualdez), City of Manila.
President of the Municipal Board (Hon. Alejandro M. Panis), City of Manila.
Director of Public Works (Mr. A. D. Williams).
City Treasurer (Mr. Victor Alfonso).
Mr. Horace B. Pond.

ABSENT

Provincial Governor of Rizal.
City Engineer.

* * * * * * *

On motion of Mr. Pond, seconded by the City Treasurer, the District Board unanimously approved the following

"RESOLUTION NO. 21

"A resolution to enact regulations for the sanitary protection of the watershed and the reservoirs and water mains, and for the proper operation and protection of the Metropolitan Water Supply and Sanitary Sewer Systems."

* * * * * * *

"RESOLUTION NO. 21 (*a*)

"A resolution to fix charges, and the rates thereof, for all services rendered by the Metropolitan Water District."

* * * * * * *

I hereby certify to the correctness of the foregoing quotations from the minutes of the Metropolitan Water District Board.

JOSE F. RAMOS
Secretary-Treasurer

By A. GIDEON
Manager

On October 6, 1925, the petitioner by its attorney filed with the Supreme Court the following demurrer to the answer:

[CAPTION AND TITLE OMITTED]

DEMURRER TO THE ANSWFR

Comes now the petitioner in the above-entitled case, by its undersigned City Fiscal, and demurs to the answer of the respondents upon the following grounds:

1. That the answer does not state facts sufficient to constitute a defense; and

2. That the answer is ambiguous, unintelligible, and uncertain.

ARGUMENTS

The basic contention of the petitioner is this: A demurrer lies against the respondents for refusing to release certain funds belonging to the City of Manila as its share in the internal-revenue collections and to pay them to said city, and for attempting to dispose of said funds in favor of the Metropolitan Water District.

The answer dodges this fundamental question raised by the petition, and sets up a special defense by alleging facts which either are foreign to the true issue or rather go in support of the petition, and which do not constitute a defense or justification of the conduct of the respondents. Let us examine one by one the thirteen allegations of the special defense.

1. The first allegation is that when the city water and sewerage systems was under the administration of the City Engineering and Public Works Department, the other departments of the city used to pay for water and water services rendered by said department.

This allegation only shows that the petitioner paid to itself its water and water services. Since the money with which said city departments paid their water consumption and other water services to another city department was in fact city money, there was in reality but a transfer of funds from said city departments to that of the city engineer. This being so, if the city preferred that each of its departments should defray its own water expense, this act of the city in connec-

tion with its own property, the water system, is no reason at all for requiring it to follow the same policy now that the control and administration of its water and sewer systems have been transferred to the Metropolitan Water District, an extraneous corporation which is entirely disconnected with the city government and pretends to have the ownership of said systems. (See the cases cited in our printed Memorandum, pp. 56, 57.)

Anyhow, the payment made by the city to itself of its water bills has nothing to do with the retention and attempted illegal disposal in favor of said District of city funds in the possession of the Internal Revenue Bureau, which are the acts complained of in the petition.

2. The second allegation in the special defense is that the Metropolitan Water District has been furnishing water and rendering water service to the petitioner.

This is a fact expressly admitted in the petition, but is no ground for the action taken by the respondents in refusing to pay to the city its lawful share of the internal-revenue collections and attempting to pay it to said District.

3. The third allegation is that the city has been voluntarily paying to said District "for *some* of the water and water services above-mentioned," as shown by Exhibit A attached to the answer.

If the city paid *some only* of said water and water services, then the inference is that either the District exempted the city from the payment of *other* water services, or the city refused to pay all of them. If the former, the fact that the District exempted the city from *other* water services shows that the District acknowledged that the collection of water charges from the city was illegal, and that it is under the obligation of reimbursing those already collected, by virtue of the provisions of article 1895 of the Civil Code, inasmuch as nobody is to be enriched at the expense of another. If the city refused to pay for *all* water and water services rendered to it by the District, then the fact that it paid for *some* of them only but shows that such partial payment was error on the part of the city. In order to show that the city recognized that it was not exempt from the payment of water and water services, it should be alleged that the city has paid absolutely

and indiscriminately for *all and every one* of the water bills presented by the District before the commencement of this action.

By the way, it will be noted that, while in paragraph 2 of the special defense respondents allege that the District has been furnishing water and rendering water services to the city since its organization in 1919, there is no allegation to the effect that the water consumption of the city from 1919 to 1921 was ever paid by the same. (Exhibit A only covers the period from 1922 to September, 1924.) The silence of the respondents in that respect demonstrates that either the District has never sent any water bill to the city covering the services rendered during those three years (1919–1921), thus owning the illegality of charging the city for said services, or if collection was ever attempted for the services during said period, payment was refused, and the District made no further efforts toward such collection.

At any rate, the payment by the city of the amounts shown in Exhibit A was not an authority for the respondents Collector of Internal Revenue and Insular Auditor to draw the aforesaid warrants for the city's allotment of the internal revenue payable to the Metropolitan Water District, instead of said city, which is the only person entitled thereto as of right.

4. Respondents allege in the fourth paragraph of their special defense that the Board of Directors of the District passed a resolution exempting the city from fees for the use of the public and fire hydrants installed therein, but that the Governor-General reversed said resolution.

If any conclusion can be drawn from this allegation it is that the very governing body of the District considered the claim of exemption of the city from water charges to be a just and reasonable one. Now, if the Governor-General opposed said resolution, that only shows that he entertained a different view from that of the District Board.

Anyhow, said opposition of the Governor-General does not affect the present claim of the petitioner, nor was obviously any justification for the respondents to attempt to pay the aforesaid funds belonging to the city to the Metropolitan Water District.

5. The fifth paragraph of the special defense recites that the same District Board passed another resolution requesting the Secretary of the Interior to recommend that Act No. 2832 be amended by the Legislature so as to relieve the city from the payment of fire and public hydrants rentals and other charges, but that the Governor-General likewise disapproved this resolution.

This fact only shows an earnest desire on the part of the said District Board to yield to the claim of the city. The disapproval of the resolution in question by the Governor-General does not, however, show that the respondents acted lawfully in depriving the city of its rightful share of the internal revenue and in attempting to pay it to the District for it is not a negative act of the Chief Executive but the law itself that would justify such an action of the respondents, and there is no such law.

6. The sixth defense is that the Board of Directors of the District has of late approved a resolution fixing the charges and rates for all services rendered by the District.

The city has, however, nothing to do with the acts and resolutions of said Board. Nor does the last-mentioned resolution constitute an authority for the respondents to dispose of city funds in favor of the Metropolitan Water District.

7. The seventh ground of respondents' special defense is that the District has been sending bills to the city for the collection of water and water services, but that the city paid some of said bills and refused to pay the others.

This allegation is ambiguous, unintelligible, and uncertain. It may mean that, of the bills sent to the city at any one time, some were paid and the others not, or that bills were sent at different times and some of them were paid and others not, or that having refused to pay some of said bills, the city afterwards decided to pay those subsequently sent.

Be it as it may, the fact remains that not all of the bills sent were paid. This only evinces the determination of the city to contest the legality of the collection of said bills. Had the city consistently paid all of said bills before the institution of these proceedings, there would be an inconsistency in its conduct, but since, as the answer says, some only of the bills were paid, the subsequent non-payment of the other bills

only evidences the acknowledgment of an error by the city. Be it what it may, it is an undeniable proposition that from two contrary acts by the same person no legitimate inference can be deduced except the contrariness of incongruity of such acts. Conceding that the city acted in the case incongruously, it by no means follows that it is prevented now to deny its liability and to contest the legality of the action of the respondents in attempting to dispose of the city's internal-revenue allotments in favor of the District.

8. The eighth allegation of the special defense is that, in view of the city's refusal to pay the aforesaid bills, the Metropolitan Water District requested the respondent Auditor "to enforce the settlement and adjustment of said outstanding accounts under the provisions of section 568 of the Administrative Code, as amended by Act No. 3066."

This allegation is ambiguous and uncertain. It assumes the existence of a settlement, of which there is no mention in the preceding paragraphs. It does not appear therefrom by whom the alleged settlement was effected. Paragraph 10 of the special defense conveys the idea that no such settlement was made before the District had required its enforcement by the Auditor, and that it was the Auditor who required the city to make said settlement. Said paragraph 10 says: "That the Insular Auditor then made demand on the City of Manila for the payment and *settlement* of said claim, etc."

The allegation in question also assumes the existence of "outstanding accounts" between the city and the District. But the whole answer only refers to an alleged indebtedness of the city. An indebtedness is one thing, and an account, a quite different thing involving debt and credit. (See the recent case of Ynchausti & Co. *vs.* Wright, G. R. No. 23601.)

Anyhow, section 588 of the Administrative Code does not authorize the respondents to take funds belonging to the city and transfer them to the District, as it was their admitted intention. The power to enforce a settlement of accounts cannot be taken as an authority for the Auditor to contravene the express provisions of the law in regard to the disposal of internal-revenue allotments. And, as we have already shown in our printed Memorandum, pp. 14, 15, the provisions of

section 588 above-mentioned are not applicable to the Metropolitan Water District.

9. The ninth allegation is to the effect that the Auditor reached the conclusion that the District's claim was just, legal, and proper. Nowhere, however, in the Jones Law, the Administrative Code, or any other statute is there any provision conferring upon the Auditor the power to dispose of internal-revenue allotments in favor of a person other than the one entitled thereto.

10. In the tenth paragraph of the special defense respondents allege that the respondent Auditor made demand on the city for the payment of the District's claim, "advising said city that, upon failure of payment, he would exercise the power vested in him by section 588 of the Administrative Code, as amended by section 1 of Act No. 3066, but the city refused to comply with said demand."

This demand being illegal, in the opinion of the city, it was justified in refusing to comply therewith. The question became then one requiring judicial intervention, according to the decision in the case of Compañía General de Tabacos *versus* French *et al.* (39 Phil., 34) and the only legal way open to the respondent Auditor was that pointed out by section 650 of the Administrative Code which provides:

"The Insular Auditor shall, through the proper channels, supervise and procure the collection and enforcement of all debts and claims, and the restitution of all funds and property, found to be due the Government in his settlement and adjustment of accounts; and if any legal proceeding is necessary to such end, he shall request the Governor-General to authorize and direct the institution of the same."

But instead of availing himself of the legal means afforded by the above section, the Auditor attempted to order the payment of the city's share in the internal-revenue collections in favor of the Metropolitan Water District.

11. The eleventh paragraph of the special defense contains an admission of the illegality of the action committed by the respondent Auditor in instructing the Collector of Internal Revenue that all warrants covering the internal-revenue collections alloted to the city be drawn in favor of the District.

This action was a clear contravention of the provisions of sections 490, 491, 492, 494, 495, and 497 of the Administrative Code. Section 617 of this code prescribes further that—

"Warrants chargeable to *revenue* or trust funds of the Insular Government shall be drawn payable either directly to the *creditor to whom the money is due* or to a disbursing officer for official disbursement, etc."

The city is the person to whom the internal-revenue allotments in question were due, and the instructions given by the respondent Auditor to the respondent Collector of Internal Revenue that all warrants for said allotments be drawn payable to the District were a manifest infringement of said section 617.

12. The twelfth allegation is that, by virtue of an arrangement between the respondents "for the purpose of putting the present question to a test," the Collector of Internal Revenue issued certain warrants in favor of the city, and the Auditor refused to countersign the same.

Whatever the purpose of the respondents might have been, the above-described act was an illegal one. There being no question as to the applicability of the provisions of the Administrative Code contained in its chapter 19, article II, to the city, nor as to the fact that the amounts in the hands of the respondent Collector written on said warrants were the exact amounts allotable to the city, the countersignature of the same became a ministerial duty of the Auditor, as has been recently decided by this Honorable Court in the Ynchausti case.

13. The last paragraph of the special defense is also an admission of the illegality of the action which would have been carried out by the respondents, had they been not enjoined from doing so by this Honorable Court. The only person entitled to the internal-revenue allotments in question was the city, and respondents were rightly and opportunely prevented by this court from doing otherwise.

In short, the answer of the respondents refers to acts of the city, the District, the District Board, the Governor-General, and the respondents themselves which by no means justify the action taken and attempted to be taken by the said respondents. Whatever might have been the conduct of the entities and persons above-mentioned, the respondents acted

illegally in preventing the city from collecting the moneys due the same which are in the hands of the respondent Collector whose Bureau is not identified with the District, the latter having not, on the other hand, any real account with the petitioner. The answer does not, therefore, state facts sufficient to constitute a defense, and those stated are in some respects in an ambiguous, unintelligible, and uncertain form.

It is, therefore, respectfully prayed that this demurrer be sustained and a mandamus issued against them as prayed for in the petition with the costs.

Manila, P. I., October 6, 1925.

Respectfully submitted,

GUILLERMO B. GUEVARA
City Fiscal, Attorney for the Petitioner

Received copy this 6th day of October, 1925.

DELFIN JARANILLA
Attorney-General

After hearing argument on the above demurrer, the Supreme Court on November 25, 1925, promulgated the following decision:

[CAPTION AND TITLE OMITTED]

IN BANC

[G. R. No. 23551. Submitted October 20, 1925. Promulgated November 25, 1925]

THE CITY OF MANILA, Petitioner

VERSUS

JUAN POSADAS, JR., as Collector of Internal Revenue, BEN F. WRIGHT, as Insular Auditor, and the METROPOLITAN WATER DISTRICT, Respondents

Justices present:

AVANCEÑA, *C. J.*, STREET, MALCOLM, VILLAMOR, OSTRAND, JOHNS, and ROMUALDEZ, *JJ.*

STATEMENT

This is an original petition for mandamus, in which it is alleged:

"I

"That the petitioner is a municipal corporation organized under the provisions of chapter 60, title X, of Act No. 2711

of the Philippine Legislature, known as the Administrative Code, and is empowered to sue and be sued.

"II

"That the respondent Juan Posadas, Jr., is, and during the period of time mentioned in this petition was, the Collector of Internal Revenue of the Government of the Philippine Islands; the respondents Ben F. Wright and Vicente Carmona are, and during the same period were, the Insular Auditor and Insular Treasurer, respectively, of the Philippine Islands, and the respondent Metropolitan Water District is a public corporation created by Act No. 2832, with powers to sue and be sued.

"III

"That the petitioner is entitled to a part and portion, determined by law, of the internal revenue collected by the respondent, the Collector of Internal Revenue (see section 488, Administrative Code), as well as to a certain per cent of the one and one-half per cent tax imposed on merchants, manufacturers and commission merchants (see section 3, Act No. 3065), and that petitioner's share of said internal revenue and one and one-half per cent tax does not constitute a credit or debt owing by, and due from, the Insular Government to the petitioner, but is a property of the petitioner, belonging and appertaining to it both as a province and as a municipality of the Philippine Islands (see section 495, par. 2, Adm. Code), used and to be used by the petitioner for the purpose of defraying the expenses necessary for its existence and operation.

"IV

"That the respondent, the Collector of Internal Revenue, in compliance with his ministerial duty imposed upon him by section 497 of the Administrative Code to pay quarterly to the petitioner, the allotments of said internal revenue and percentage tax belonging to it, has been in the past drawing warrants for said allotments payable to the petitioner; but that from and after the month of January, 1922, the said respondent has ceased to make such payments to the petitioner, and has drawn warrants for such internal revenue and

percentage tax allotments belonging to the petitioner, payable to the Metropolitan Water District, a water corporation created by Act No. 2832 of the Philippine Legislature.

"V

"That the petitioner is informed, and, therefore, alleges, that the transfer and payment of said allotments of the internal revenue and percentage tax, belonging to the petitioner, to the said Metropolitan Water District has been made by the respondent Collector of Internal Revenue by and under certain instruction of the respondent Insular Auditor, dated January 5, 1922, a certified copy of which is attached hereto and made a part hereof, marked as Exhibit A.

"VI

"That the petitioner is also informed, and, therefore, alleges, that the respondent Insular Auditor has instructed his co-respondent Collector of Internal Revenue to pay the said allotments of internal revenue and percentage tax aforementioned, belonging to the petitioner, to the said Metropolitan Water District, instead of the petitioner, for the purpose of setting off certain alleged debts of the petitioner for alleged water services rendered it by the said Metropolitan Water District."

It is then alleged that, upon receipt of such information, the city notified the Collector of Internal Revenue that such proceedings were illegal and void, and that in the future payments should be made to the City of Manila, in accordance with the provisions of section 497 of the Administrative Code.

"VIII

"That in spite of the letter or communication sent by the petitioner, through its attorney, to the respondent Collector of Internal Revenue, the latter, following instructions of the other respondent, Insular Auditor, informed the petitioner by a communication bearing date of January 5, 1925, which is hereto attached and made a part hereof as Exhibit C, that he would continue making payments of the share belonging to the petitioner of the internal revenue and of the especial tax imposed by Act No. 3065, including that corresponding

to the last quarter of the year 1924, in favor of the respondent Metropolitan Water District, and the petitioner believes, and, therefore, alleges that said respondent Collector of Internal Revenue will carry out such threats unless timely prevented from so doing by this Honorable Court.

"IX

"That there does not exist between the Metropolitan Water District, which is neither a governmental entity, nor office, nor branch of the Insular Government (see section 1, Act No. 2832), and the petitioner City of Manila, any account the settlement of which the respondent Insular Auditor could legally authorize and enforce.

"X

"That the petitioner does not owe anything to the Metropolitan Water District by way of alleged water service rendered by said District to said petitioner; and that the latter has up to the present time been questioning the power of said District to render and collect any bill for water supplied to the petitioner.

"XI

"That Act No. 2832 does not empower the Metropolitan Water District, either expressly or impliedly or in general terms, to charge for water consumed by the petitioner, from the water system of the City of Manila.

"XIX

"That the said Act No. 2832 did not have more object, and in fact, did not do more than to transfer, from the petitioner to the Metropolitan Water District, the possession, administration, control and management of the sewer and water supply systems of the City of Manila, and, to this effect, has provided, in its section 8 that the said District receive and assume all assets and liabilities together with the bonds sinking funds of said systems, the same as if it were a mere receiver or judicial depositary.

"XXI

"That as one of the liabilities of the water supply system of the City of Manila, and among the charges, obligations

and responsibilities going with said system which constitutes a part of said liabilties, is that of furnishing water free of charge to the petitioner, in its aforesaid capacities as owner and fiduciary, for all its uses and needs.

"XXV

"That even supposing that the respondent Insular Auditor is empowered to settle accounts outstanding between the petitioner and the Metropolitan Water District, the said petitioner has up to the present time contested the bills of the latter for alleged water services rendered the petitioner for the reason that the same are not authorized by law, and that said Insular Auditor is not authorized to settle or adjust accounts which, not being based upon any provision of law, are only made so by an erroneous interpretation of the law by said Auditor, by disposing in favor of said District of funds clearly belonging to the petitioner, such as its share in the collections obtained by the enforcement of the internal-revenue laws and of Act No. 3065.

"XXVI

"That it is a ministerial duty on the part of the respondent Collector of Internal Revenue to make in favor of the petitioner quarterly allotments of the share of internal revenue collected by him, corresponding to said petitioner, and of its portion of the tax imposed by Act No. 3065 (sec. 497, Adm. Code).

"XXVII

"That there is no law authorizing the respondent Insular Auditor to prevent his co-respondent Collector of Internal Revenue from complying with his ministerial duty referred to in the next preceding paragraph hereof, or to give the latter instructions to the effect that the above-mentioned allotments which, by clear and express provision of law, ought to be made in favor of the petitioner, should be made and paid in the name and in favor of the Metropolitan Water District; nor is said respondent Insular Auditor also authorized by any law to constitute himself a judge and arbiter of disputes regarding the interpretation of laws arising between a municipal corporation and a public corporation which

does not belong to the Insular Government or any executive branch of the Government of the Philippine Islands.

"XXX

"That the respondent Ben F. Wright, Insular Auditor, is without authority of law to issue a warrant by himself, much less a warrant covering amounts payable and chargeable against the apportionment of the City of Manila in the internal-revenue collections and special assessment imposed by Act No. 3065.

"XXXI

"That the respondent Vicente Carmona, Insular Treasurer, is likewise without any authority of law to honor, cash, or otherwise pay out of the funds belonging to the petitioner as aforesaid, any check, warrant, or order of payment issued by the respondent Ben F. Wright, Insular Auditor, or by any other officer, except only after judicial determination of the present controversy.

"XXXII

"That to permit such an open violation of the law by the herein respondents, the aforesaid warrants corresponding to the allotments of funds of internal revenue partaining to the petitioner, collected during the last quarter of 1924, as well as those which may thereafter be collected and may be payable to said petitioner, would be issued and made payable to the Metropolitan Water District, in violation of the law, and to the serious detriment of the petitioner's interests in particular and of the public interests in general.

"XXXIII

"That as a result of the acts of the respondents above related, the petitioner has suffered and will suffer irreparable damages and has encountered and will encounter serious and considerable embarrassments and obstacles in the discharge of its corporate and governmental functions, unless said respondents are immediately restrained and enjoined from such acts by this Honorable Tribunal."

The Metropolitan Water District is made a party defendant, for the reason that it claims to have interests which are adverse to those of the petitioner.

It is then alleged that the city does not have any plain, speedy, or adequate remedy in the ordinary course of law.

Under our view of the case, the foregoing allegations are the only ones which are material to this opinion. The complaint, which is quite voluminous, also purports to give a history of the water system of the City of Manila, and alleges in substance that any title to such water system which the Metropolitan Water District may have is held by it in trust and for the use and benefit of the city.

To this petition, a demurrer was filed by the defendants upon the ground that it did not state facts sufficient to constitute a cause of action.

After arguments were heard, and the respective briefs of opposing counsel were submitted, the demurrer of the defendants was overruled, and an answer was filed, in which they deny all of the material allegations of the petition, and as a special defense allege:

"1. That when the water and sewerage system referred to in the petition was under the administration of the Sewer and Waterworks Division of the Engineering and Public Works Department of the City of Manila, the other departments of the city paid for water and other services furnished to them by said Division;

"2. That the Metropolitan Water District, since its organization in the year 1919 up to the present, has been furnishing water and rendering water services to the Government of the City of Manila;

"3. That the Government of the City of Manila has been voluntarily paying to the Metropolitan Water District for some of the water and water services above-mentioned in the amounts, for the purposes, and for the period specified in the statement marked Exhibit A attached to this answer and made a part thereof;

"4. That on January 28, 1924, a supposed majority of the Board of Directors of the Metropolitan Water District passed a resolution exempting the Government of the City of Manila from fees for the water consumed by the fire and public hydrants installed in said city; but upon appeal duly taken by the minority of said Board to the Governor-General, through the Secretary of the Interior, under the provisions of section

4 of Act No. 2832, as amended by section 2 of Act No. 3109, the Governor-General in an indorsement dated September 18, 1924, reversed the above resolution of the alleged majority of the Board and decided 'that the City of Manila shall pay for all services rendered by the Metropolitan Water District.' A copy of the correspondence in regard to the above resolution, appeal, and decision, marked Exhibit B is hereto attached and made a part hereof;

"5. That on August 11, 1924, a majority of the Board of Directors of the Metropolitan Water District approved a resolution to the effect that the Secretary of the Interior be 'requested to recommend to the Legislature the amendment of the Organic Act of the Metropolitan Water District in such a way as to relieve the City of Manila from payment for fire hydrant rentals, and for water and service maintenance charges of public hydrants'; but the minority members of the Board duly appealed from this resolution to the Governor-General, through the Secretary of the Interior, under the provisions of section 4 of Act No. 2832, as amended by section 2 of Act No. 3109, and the Governor-General rendered the same decision mentioned in the next preceding paragraph. A copy of the correspondence referring to this matter, marked Exhibit C, is hereto attached and made a part hereof;"

It is then alleged that on November 17, 1924, the Board of Directors of the Metropolitan Water District unanimously approved Resolution No. 21, entitled "A resolution to fix charges, and the rates thereof, for all services rendered by the Metropolitan Water District," in and by which all consumers of water were to be charged uniform rates.

"7. That the Metropolitan Water District has been sending bills to the Government of the City of Manila for the collection of the value of the water and water services which it had been furnishing to said city; but while said Government has been paying some of those bills it has refused to pay others;

"8. That the Metropolitan Water District advised the Insular Auditor of the refusal of the Government of the City of Manila to pay the above-mentioned bills, requesting the latter to enforce the adjustment and settlement of said outstanding

accounts under the provisions of section 588 of the Administrative Code, as amended by Act No. 3066;

"9. That the Insular Auditor, after due study of the above claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that said claim was just, legal, and proper;

"10. That the Insular Auditor then made demand on the City of Manila for the payment and settlement of said claim, advising said city that, upon failure of payment, he would exercise the power vested in him by section 588 of the Administrative Code, as amended by section 1 of Act No. 3066, but the city refused to comply with said demand;

"11. That thereupon the Insular Auditor instructed the Collector of Internal Revenue that thereafter and until further notice, all warrants covering the internal-revenue collections allotted to the City of Manila be drawn by said Collector in favor of the Metropolitan Water District instead of said city as theretofore;

"12. That by virtue of an arrangement between the Insular Auditor and the Collector of Internal Revenue for the purpose of putting the present question to a test, the latter officer issued warrant No. 636, dated December 9, 1924, for the sum of ₱21,880.57 and warrant No. 638, dated December 23, 1924, for the sum of ₱3,856.04, both covering the internal-revenue allotment of the City of Manila, in favor of said city instead of the Metropolitan Water District, and the Insular Auditor, pursuant to the same arrangement, refused to countersign said warrants and returned them, unsigned by him, to the Collector of Internal Revenue;

"13. That on January 5, 1925, the Collector of Internal Revenue, in answer to a communication from the City Fiscal, advised the latter that pursuant to subsequent instructions from the Insular Auditor, he would, within ten days from said date, proceed to issue the warrants for the above-mentioned sums, in favor of the Metropolitan Water District, but due to the preliminary injunction issued in the present case the Collector of Internal Revenue was prevented from doing so."

To this answer, the petitioner filed a demurrer upon the ground, first, that the answer does not state facts sufficient to constitute a defense, and, second, that the answer is ambiguous, unintelligible, and uncertain.

Hence, the only question now before this court is whether or not the facts alleged in the special defense constitute a defense to plaintiff's cause of action.

JOHNS, *J.*:

Section 2427 of the Administrative Code says:

"This chapter shall be known as the Charter of the City of Manila."

Section 2428 provides:

"The City of Manila constitutes a political body corporate and as such is endowed with the attribute of perpetual succession and possessed of the powers which pertain to a municipal corporation, to be exercised in conformity with the provisions of this charter."

Section 2429 provides:

"The city may have a common seal, and alter the same at pleasure, and may take, purchase, receive, hold, lease, convey, and dispose of real and personal property for the general interests of the city, condemn private property for public use, contract and be contracted with, sue and be sued, and prosecute and defend to final judgment and execution, and exercise all the powers hereinafter conferred."

Section 2434, as amended by Act No. 2774, provides:

"The Mayor shall be the chief executive of the city, and as such, shall have immediate control over the executive functions of the different departments, subject to the authority and supervision of the Secretary of the Interior.

"The Mayor shall be appointed by the Governor-General with the consent of the Senate, shall hold office for three years unless sooner removed . . ."

Section 2439 provides:

"The Municipal Board shall be the legislative body of the city, and shall consist of ten elective members who shall hold office for four years or until their successors are elected and

qualified. The members of the Board shall elect each year from among their number a president, who for one year shall preside at all meetings of the Board at which he is present. In his absence, the Board shall elect one of its members as temporary presiding officer. The president shall sign all ordinances, and all resolutions and motions directing the payment of money or creating liability, enacted or adopted by the Board."

This was amended so as to make the terms of office of the members of the Board for a period of three years.

Section 2440 provides:

"The members of the Municipal Board shall be elected at large from the entire city, and each of them at the time of his election shall be a resident for at least one year, and a qualified elector, of his Assembly district, and not less than twenty-three years of age . . ."

Section 2442 provides:

"The Board shall make all appropriations for the expenses of the government of the city . . ."

Section 2444, as amended by Act No. 2774, specifies and defines the "General powers and duties of the Board," which are very broad and comprehensive, and covers all matters which are necessary and material to the administration of a government by the city.

Subsection (*u*) of that Section provides:

"For the laying out, construction, and improvement, and to regulate the use, of streets, avenues, alleys, sidewalks, wharves, piers, parks, cemeteries, and other public places . . ."

and subsection (*x*) provides:

"For the maintenance of waterworks for the purpose of supplying water to the inhabitants of the city, and for the purification of the source of supply and the places through which the same passes, and to regulate the consumption and use of the water; to fix and provide for the collection of rents therefor; and to regulate the construction, repair, and use of hydrants, pumps, cisterns, and reservoirs."

Section 2465, as amended by Acts Nos. 3043 and 3169, provides:

"The law department shall consist of the fiscal of the city and of seven assistants, who shall discharge their duties under the general supervision of the Attorney-General. The fiscal of the city shall be the chief legal advisor of the city and all offices and departments thereof; shall represent the city in all civil cases wherein the city or any officer thereof in his official capacity is a party . . ."

Section 2468 provides:

"The Municipal Court shall have territorial jurisdiction embracing the entire police jurisdiction of the city . . ."

It will thus be seen that under the terms and provisions of its charter, the City of Manila has both executive, legislative, and judicial powers, and that all of such powers are vested and conferred by an Act of the Legislature of the Philippine Islands.

Section 3 of the Organic Act or what is known as the Jones Law says:

"That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws . . .

"That no money shall be paid out of the treasury except in pursuance of an appropriation by law.

"That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only."

Section 8 provides:

"That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act."

Section 490 of the Administrative Code says:

"*Disposition of internal revenue in general.*—Internal revenue collected under the laws of the Philippine Islands and

not applied as hereinabove provided or otherwise specially disposed of by law shall accrue to the Insular Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment under the next succeeding section."

Section 491 provides:

"*Allotments of internal revenue for special purposes.*—Of the internal revenue accruing to the Insular Treasury under the preceding section there shall be set apart ten per centum as a provincial allotment, ten per centum as a road and bridge allotment, and twenty per centum as a municipal allotment; but the amounts alloted to said several purposes during any year shall not be greater than the amount alloted for the same purposes during the fiscal year nineteen hundred and nine."

Section 492 provides:

"*Apportionment and use of provincial allotment.*—The provincial allotment shall be apportioned to the treasuries of the several respective provinces and shall there accrue to their general funds, respectively."

Section 494 provides:

"*Apportionment and use of municipal allotment.*—The municipal allotment shall be for the benefit of the inhabitants of the Islands in the purview of their community requirements, being available for municipal or other use as hereinbelow provided."

Section 495 provides:

* * * * * * *

"The City of Manila shall receive the shares which it would receive if it were both a municipality and a regularly organized province, and for the purposes hereof shall be deemed to be both the one and the other."

Section 497 provides:

"*Warrants for quarterly payment of allotments.*—The payment of the internal-revenue allotments shall be made from the Insular Treasury quarterly, upon warrants drawn by the Collector of Internal Revenue."

It appears from the answer of the defendants that under the terms and provisions of said section 497, the Collector of Internal Revenue:

"Issued warrant No. 636, dated December 9, 1924, for the sum of ₱21,880.57 and warrant No. 638, dated December 23, 1924, for the sum of ₱3,856.04, both covering the internal-revenue allotment of the City of Manila, in favor of said city instead of the Metropolitan Water District, and the Insular Auditor, pursuant to the same arrangement, refused to countersign said warrants and returned them, assigned by him, to the Collector of Internal Revenue."

That is to say, such warrants represent the amount which the city should receive as its allotment from and out of the "internal revenues collected under the laws of the Philippine Islands," and that fact is admitted by defendants' answer. This money is to be paid to the city from and out of the public revenues of the Government, and it is public money, which has been assessed, levied, and collected by the Government for governmental purposes, and the law says that the City of Manila shall have and receive twenty per centum of such money as a municipal allotment, and it also says that it shall receive that money quarterly "upon warrants drawn by the Collector of Internal Revenue." When the money was assessed, levied, and collected, in so far as the City of Manila is concerned, it was assessed, levied, and collected for a specific purpose, and for such reason, it should "be treated as a special fund in the treasury and paid out for such purpose only." The money was public money in the Treasury of the Government, and it was there held in trust for the sole use and benefit of the city.

The Jones Law further provides:

"That no money shall be paid out of the Treasury except in pursuance of an appropriation by law." (Sec. 3.)

and in this instance, an appropriation could only be made by the Legislature of the Philippine Islands or the legislative body of the City of Manila.

There is no claim or pretense that any appropriation has ever been made out of the public funds to pay the claim of the Metropolitan Water District against the City of Manila,

and yet in legal effect the defendants seek to take money out of the Treasury of the Philippine Islands which belongs to the treasury of the City of Manila, and to pay the private debt which the Metropolitan Water District claims to have against the City of Manila. The City of Manila has no authority to pay any debt against it, "except in pursuance of an appropriation by law." Neither has any person any authority to take money out of the Treasury of the Government for any purpose, "except in pursuance of an appropriation by law," and there is no claim or pretense that any appropriation was ever made by the government or the City of Manila to pay the claim of the Metropolitan Water District against the City of Manila.

In the case of Reeside *versus* Walker, Secretary of the Treasury of the United States (52 U. S. Reports, 271), the Supreme Court of the United States says:

"Where the United States were the plaintiffs, and a verdict was rendered that they were indebted to the defendant, and an application was made for a mandamus to compel the Secretary of the Treasury to credit the defendant upon the books of the Treasury with the amount of the verdict, and to pay the same, the mandamus was properly refused by the Circuit Court. For a mandamus will only lie against a ministerial officer to do some ministerial act where the laws require him to do it and he improperly refused to do so.

"Besides, there was no appropriation made by law, and no officer of the Government can pay a debt due by the United States without an appropriation by Congress."

And on page 290, the opinion says:

"No officer, however high, not even the President, much less a Secretary of the Treasury or Treasurer, is empowered to pay debts of the United States generally, when presented to them. If, therefore, the petition in this case was allowed so far as to order the verdict against the United States to be entered on the books of the Treasury Department, the plaintiff would be as far from having a claim on the Secretary or Treasurer to pay it as now. The difficulty in the way is the want of any appropriation by Congress to pay this claim. It is a well-known constitutional provision, that no money

can be taken or drawn from the Treasury except under an appropriation by Congress. See Constitution, article 1, paragraph 9 (1 Stat. at L., 15).

"However much money may be in the Treasury at any one time, not a dollar of it can be used in the payment of any thing not thus previously sanctioned. Any other course would give to the fiscal officers a most dangerous discretion."

As stated, the City of Manila is a municipal corporation with broad and general legislative powers given to it by the Legislature.

The Metropolitan Water District was also created by Act No. 2832 of the Legislature, and is entitled:

"An Act creating a public corporation denominated the Metropolitan Water District, prescribing its functions and activities, and for other purposes."

Section 2 provides:

"*Powers and general functions of the District.*—The powers, functions, and activities of the Metropolitan Water District of Manila shall be the following:

"(*a*) To have continuous succession under its corporate name until otherwise provided by law;

"(*b*) To prescribe its by-laws;

"(*c*) To adopt and use a seal and alter it at its pleasure;

"(*d*) To sue and be sued in any court;

"(*e*) To construct, maintain, and operate mains, pipes, water reservoirs, machinery, and other waterworks for the purpose of supplying water to the inhabitants of the District, both for domestic and other purposes; to purify the source of supply, regulate the control and use, and prevent the waste of water; and to fix and provide for the collections of rents therefor; etc."

Section 3 provides (as amended by Act No. 3109):

"*District Board; its members, reports to the Department of the Interior.*—Unless otherwise provided by law, all corporative powers of the Metropolitan Water District shall be exercised, its business managed, and its property kept and preserved, by a Board to be composed of the Mayor of the City of Manila, the President of the Municipal Board of the

City of Manila, the Governor of the Province of Rizal, the Director of Public Works or his representative, the Engineer of the City of Manila, the City Treasurer, and a taxpayer of the district, being a resident of the City of Manila, appointed by the Governor-General, with the consent of the Senate."

Section 8 provides:

"*Assets and liabilities of the Manila water and sewer system; their transfer to the District; sinking fund and Government guaranty.*—The District Board is hereby authorized and directed to receive and assume on behalf of the Metropolitan Water District all assets and liabilities pertaining to the sewerage and waterworks systems of the City of Manila, together with the sewerage and waterworks bonds sinking funds, and of all the indebtedness in general of the present sewer and water system of the City of Manila, and in turn to pledge such assets as security for the payment of the sewerage and waterworks bonded debt thus acquired."

Section 10 provides:

"*Powers reserved to the Legislature.*—This Act or any part thereof may be amended or repealed at any date by legislative authority, and the Metropolitan Water District may be reorganized or dissolved by legislative provision."

That is to say, the City of Manila is a municipal corporation, deriving all of its powers from the Legislature, and the Metropolitan Water District is a public corporation, as distinguished from a municipal corporation, and derives all of its powers from the Legislature. The City of Manila derives all of its revenues from public funds in the nature of fines, licenses and taxes assessed, levied and collected for its maintenance. The Metropolitan Water District derives all of its revenues from private sources and monies which it collects from consumers of its waters.

Under the facts alleged in the answer, the defendants undertook to take the money out of the Government Treasury which belongs to the city and use it to pay a disputed claim of a public corporation against the city over the vigorous protest of the city.

Assuming all of such facts to be true, the answer alleges as a defense:

"8. That the Metropolitan Water District advised the Insular Auditor of the refusal of the Government of the City of Manila to pay the above-mentioned bills, requesting the latter to enforce the adjustment and settlement of said outstanding accounts under the provisions of section 588 of the Administrative Code, as amended by Act No. 3066."

Section 588 of the Administrative Code, as amended by Act No. 3066, provides:

"*Authority of auditor in adjustment of accounts between offices.*—The Insular Auditor shall have the power, subject to such regulations as may be prescribed therefor, to authorize and enforce the settlement of accounts subsisting between the different bureaus or offices of the Insular service; between any such bureau or office and any provincial, municipal, or city government; between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments."

Act No. 3066 is entitled "An Act to amend certain sections of the Administrative Code, and for other purposes."

Section 584 of the Administrative Code, as amended by Act No. 3066, provides:

"*General jurisdiction of Bureau of Audits.*—The authority and powers of the Bureau of Audits extend to and comprehend all matters relating to accounting procedure, including the keeping of the accounts of the Government, the preservation of vouchers, the methods of accounting, the examination and inspection of the books, records, and papers relating to such accounts, and to the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as to the examination and audit of all debts and claims of any sort due from or owing to the Government of the Philippine Islands in any of its branches. The said jurisdiction shall also extend to all corporations established and organized in accordance with the laws of the Philippine Islands wherein the Government of the said Islands or any of its branches owns the majority of the stock . . ."

Section 593, as amended by the same act, provides:

"Auditing districts; assignment and compensation of district auditors.—The provinces of the Philippine Islands, the chartered cities and the Metropolitan Water District, which shall be regarded as provinces, are hereby divided into twenty-two regular and one special auditing districts . . ." These twenty-three districts are grouped into four divisions.

There is nothing in any of these provisions which would authorize or justify the Insular Auditor to compel a municipal corporation to pay a claim to a public corporation where the city disputes the claim.

The question involved between the city and the Metropolitan Water District is not one of an accounting. There is no pretense that the City of Manila has any claim of any kind against the Metropolitan Water District, and the only claim which the Metropolitan Water District has against the city is for the use of water, and the city disputes the validity of the claim.

Hence, the question involved between the city and the Metropolitan Water District is one of legal liability, and of legal liability only.

The answer further alleges as a defense:

"9. That the Insular Auditor, after due study of the above claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that said claim was just, legal, and proper."

That defense is based on the assumption that the Auditor has judicial powers, and yet there is no claim or pretense that any hearing was ever had or that any process was ever served on the city, or that it ever had any previous notice of the proceeding, or that it was given an opportunity to defend, and yet the record shows that the Auditor knew that the city denied any liability.

In defining what is "due process of law," Words and Phrases, Vol. 3, says:

Page 2227:

"The principle that no man shall be deprived of his liberty or property except by the 'law of the land,' or its synonym,

'due process of law,' is older than written constitutions—older even than Runnymede and breathes so palpably of exact justice that it needs no formulation in the organic law."

Page 2230:

"Due process of law is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life, liberty, or property, whether the process be judicial or administrative or executive in its nature.

" 'Due process of law,' in its constitutional meaning, includes administrative process of the customary sort, as well as judicial process."

Page 2238:

"To give the clause of the Constitution which guaranties that 'no person shall be deprived of life, liberty, or property without due process of law,' therefore, any value, it must be understood to mean that no person shall be deprived by any form of legislation or governmental action of either life, liberty, or property, except as the consequence of some judicial proceeding, appropriately and legally conducted. It shows that a law which by its own inherent force extinguishes rights of property, or compels their extinction, without any legal process whatever, comes directly in conflict with the Constitution."

Page 2243:

" 'Due process of law' implies that whenever, in a judicial proceeding, a judgment is rendered by a court of justice affecting the liberty or condemning the property of another person, he is entitled to have reasonable notice of such procedure, trial, or contest."

In other words, "due process of law" is a fundamental, constitutional right given to every person, which it is the sworn duty of the courts to honor and protect.

Giving to Act No. 3066 its broadest possible construction, we are clearly of the opinion that, as between the City of Manila and the Metropolitan Water District, the Insular Auditor is not vested with judicial powers. By their respective charters, one is a public corporation, and the other is a municipal corporation.

The United States is under a Republican form of government in which all powers are vested in the executive, legislative, and judiciary, and their respective limits are clearly specified and defined, and as to the question here involved, those principles are embodied in and made a part of the Jones Law, known as the Organic Act of the Philippine Islands, and of section 17 of the Administrative Code.

The answer further alleges that on January 28, 1924, an alleged majority of the Board of Directors of the Metropolitan Water District passed a resolution, exempting the City of Manila from the payment of water consumed by fire and the public hydrants of the city. That an appeal was taken by the minority of the Board to the Governor-General, who reversed the action of the Board, and decided "that the City of Manila shall pay for all services rendered by the Metropolitan Water District."

It will be noted that the City of Manila was not a party to that proceeding, and that the only thing which the Board of Directors undertook to do was to exempt the city from the payment of water, and that the action of the Board was reversed by the Governor-General. That was the only question presented on the appeal.

It is further alleged that on August 11, 1924, a majority of the Board of Directors of the Water District passed a resolution that the Secretary of the Interior be requested to recommend to the Legislature to amend the Organic Act of the Water District, so as to relieve the City of Manila from such payment, and that upon appeal by the minority of the Board, this action of the Board also was reversed by the Governor-General. That is to say, the Board of Directors of the Metropolitan Water District passed a resolution to have the law amended so as to relieve the city from the payment of water, and the action of the Board was reversed by the Governor-General. No other question was presented to or considered by the Governor-General, and it is not claimed that the city was a party to that proceeding. The Governor-General did nothing more than to say that the Metropolitan Water District had a claim against the city for water which the city ought to pay, and that it ought not to be exempted from liability.

No one questions the power or authority of the Governor-General to make either one of those decisions. They were both executive acts. But the question as to whether money may be unlawfully taken out of the Government treasury, which belongs to the city, and given to and applied by a public corporation upon the payment of an alleged claim, which it has against the city, and upon which the city denies all liability, or as to whether the city is legally liable, or has a valid defense or counterclaim, is another and a very different question, and one upon which the city has a legal right to be heard and to defend itself.

In the final analysis, we have this situation. An attempt was made to take money out of the Government treasury, which belongs to the City of Manila, a municipal corporation, and apply it to the payment of a debt which a public corporation claims to have against the city. That proceeding was in direct conflict with three of the express provisions of section 3 of the Jones Law.

First, it violates that portion of the section which says that no law shall be enacted "which shall deprive any preson of life, liberty, or property without due process of law."

The answer does not claim or allege that the city was ever served with any process or that it had notice or was given an opportunity to defend itself before the Insular Auditor rendered his decision.

Second, it violates that portion of the section which says:

"That no money shall be paid out of the treasury except in pursuance of an appropriation by law."

It is not claimed that any appropriation was made by the Government or the city to pay the claim of the Metropolitan Water District against the city, and yet over the vigorous protest and objection of the city, defendants propose to take money out of the Government treasury, which belongs to the city, and pay an alleged debt of the Metropolitan Water District against the city. No money can be taken out of the Government treasury for any purpose without an appropriation having first been made for that specific purpose. In legal effect that was the decision of this court in Gotamco *versus* Wright, decided November 5, 1924, and published in volume

23 of the Official Gazette, page 1245, where in an opinion written by Justice Ostrand, it is said:

"Section 3 of the Organic Act expressly provides that 'no money shall be paid out of the Treasury except in pursuance of an appropriation by law.' Neither the Insular Collector of Customs nor any other official of the Government is authorized to order the expenditure of unappropriated funds."

And third, the other provision which says:

"That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only."

Here, the defendants propose to take public money from and out of the Government treasury, which is in a special fund, and which was assessed, levied, and collected for a special purpose, and pay it over to a public corporation. In other words, to take money out of the Government treasury, which was assessed, levied, and collected for the exclusive use and benefit of the City of Manila, a municipal corporation, and pay it to the Metropolitan Water District, which is a public corporation.

No authority has been cited, and none will ever be found to legalize such a proceeding.

In the recent decision of this Court in the case of Ynchausti *versus* Wright, it was held that the decisions of the Insular Auditor are final and conclusive only upon the "executive branches of the Government."

Accepting that as the law of this court, the defendants vigorously contend that the City of Manila is an executive branch of the Government. That position is not tenable. It is true that by the terms of the charter, the Mayor of the City of Manila is the executive officer of the city, and that the Mayor is appointed by the Governor-General. It is also true that by the terms of the charter, the Municipal Board is the legislative body of the city, which consists of ten members, who are elected by a direct vote of the people, and that it is the duty of the Board to elect a president from one of its own members, and that "the president shall sign all ordinances, and all resolutions and motions directing the payment of money or creating liability, enacted or adopted

by the Board." That is to say, in the first instance, the power to allow or disallow a claim against the city, like the one in question, is vested in the Municipal Board, and it is elected by a direct vote of the people, and the charter of the City of Manila was granted by the Legislature of the Philippine Islands, and approved by the then Governor-General.

If, in the first instance, the power to allow or disallow a claim, like the one in question, was vested in the Mayor, there might be some merit in the contention, that it would then be an executive act. But that authority is vested in the council, and in such cases, the only power which the Mayor has is that of veto, and the council has the power to overrule his veto. Under the terms and provisions of the charter, the allowance or disallowance of a claim against the city, subject only to a veto, is vested exclusively in the legislative body of the city, which is elected by a direct vote of the people, and, outside of his power of veto, is a matter over which the Mayor has no control.

It must follow that under the provisions of the charter of the City of Manila, the allowance or disallowance by the municipal Board of a claim like the one in question is a legislative act, and that in the doing of such an act, the city would be exercising its legislative powers, and for such reason, and, if it is in any case, in that particular at least, the city is not an executive branch of the government.

The city claims and alleges that any title which the Metropolitan Water District may have in or to the water system is held by the Water District in trust and for the use and benefit of the city. That would be an equitable defense, and one upon which the city has the right to be heard and to have judicially determined.

This is a mandamus proceeding, and it is fundamental that title to property cannot be litigated in this kind of an action. It also appears that any claim which the Water District may have against the city is founded upon a contract express or implied for which mandamus will not lie.

Ruling Case Law, vol. 18, p. 129, says:

"43. *Contract rights.*—Obligations which rest solely upon contract will not be enforced by mandamus where there is no question of trust or of official duty; it is not the appro-

priate remedy for the enforcement of private contract rights."

On legal principle, the dicision of this court in the case of Rosario *versus* The Mayor of the City of Manila, is in point. Although the question there presented was "to enforce the performance of a private contract," the opinion written by Justice Street says that mandamus:

"Never lies where the party aggrieved has adequate remedy at law, and its aid is only to be invoked to prevent an absolute failure of justice in cases where ordinary legal processes furnish no relief."

And quotes with approval from the decision in State *ex rel.* Bohannon *versus* Howard County (39 Misso., 375), where the court says that it would not:

" 'Undertake by writ of mandamus to enforce simple common law rights between individuals, such as payment of money, or where there is another adequate legal remedy.' "

And the opinion of Justice Street says:

"The authorities, almost without exception, support the doctrine stated in the foregoing cases," citing a number of authorities.

It follows that the question as to whether or not the Metropolitan Water District has a valid claim against the City of Manila cannot be litigated in this kind of a proceeding, but assuming that its claim was valid, it would not be a defense to plaintiff's petition. The same thing is true as to the allegation in the petition, that the Metropolitan Water District holds the title to the water system in trust and for the use and benefit of the city. That question cannot be litigated in this action.

Hence, the only question now before this Court is as to whether the city has a legal right to have the warrants in question issued to and in its favor, and as to whether the acts of the Collector of Internal Revenue and the Insular Auditor, in seeking to pay over the money in question to the Metropolitan Water District are null and void.

Based upon the statutory provisions and the admitted facts, we are clearly of the opinion that the warrants in question

should be drawn to and in favor of the city, and that it is legally entitled to the possession of the funds, and that the decision of the Insular Auditor to divert the funds to the Metropolitan Water District is null and void and of no legal force and effect.

Under their respective charters, both the Metropolitan Water District and the city can sue and be sued. If the Metropolitan Water District has a valid claim against the city, that fact can legally be ascertained and determined in a judicial proceeding for that purpose, and in the same manner as any other disputed claim. If the Water District holds the title to the water system in trust and for the use and benefit of the city, that fact can also be determined in the same way, and the whole question settled. But neither of such questions can be judicially determined in a mandamus proceeding. Both of those questions will have to be determined in another and a different proceeding, upon proper pleadings, and decided upon the merits, and about which at this time and upon this record, we do not have or express any opinion.

Suffice it to say that the City of Manila is solvent and can be made to pay any debt that it legally owes, and that as to the title of the property, the city has ample redress against the Metropolitan Water District.

It will be noted that in the answer of the defendants:

"They deny, all and singular, the allegations contained in the other paragraphs of the petition, except those that in the following special defense are specifically admitted."

That is to say, the answer is in the nature of a general denial, except as to those questions which are alleged and admitted in the "special defense," which is in the nature of a plea of "confession and avoidance." In legal effect, the special defense admits the doing of the things of which the petitioner complains, and in justification alleges how and by whom they were done and the reasons why they were done.

The demurrer of the petitioner is upon the ground that the answer does not state facts sufficient to constitute a defense.

In its argument on the demurrer, the city says nothing whatever about the general denial in the answer, and con-

fines itself to the matters set forth and alleged in the special defense, from which it is very apparent that it was the purpose and intent of the city to limit its demurrer to the special defense alleged in the answer, and that it should be so construed.

Based upon the allegations made in the petition and those made in the special answer, it is the judgment of the Court that the demurrer, in so far as it alleges that the answer does not allege facts sufficient to constitute a defense, be sustained as to the special defense plead in the answer, and unless the defendants shall within *ten days* amend their answer, so as to cure the defects pointed out in this decision, the petition prayed for shall issue as follows:

First, that a writ of mandamus shall issue "ordering the respondent Collector of Internal Revenue to issue in favor of the petitioner, and not to the Metropolitan Water District, all the warrants which he ought to issue for the share of the petitioner in the internal revenue collections and in whatever other fiscal collections to which said petitioner is, by law, entitled."

Second, that a writ of mandamus shall issue "ordering the respondent Ben F. Wright, Insular Auditor, his deputies, agents, employees, or other persons acting in his stead, to countersign and approve any check, warrant or order of payment which the respondent Collector of Internal Revenue may issue in favor of the petitioner for such sum of money as represent its share or allotment in the internal revenue collections and in the special tax imposed by Act No. 3065."

That the temporary injunction heretofore issued by the Vacation Justice shall be, and is hereby, made permanent, and in all other respects, the prayer of the petitioner is denied. Neither party to recover costs.

It is so ordered.

CHARLES A. JOHNS

We concur: RAMON AVANCEÑA, GEO. A. MALCOLM, IGNACIO VILLAMOR, NORBERTO ROMUALDEZ.

NOTE.—Mr. Justice Johnson and Mr. Justice Villa-Real took no part in the consideration of this case.

OSTRAND, *J., dissenting:*

I dissent. In my humble judgment, the court has exceeded its jurisdiction in ordering the issuance of the writ of mandamus to the Insular Auditor upon the facts shown by the pleadings.

The Organic Act (Act of Congress of August 29, 1916, the so-called Jones Law) gives the Insular Auditor extensive powers, some of them of a judicial character. Section 24 of the Act provides that he "shall examine, audit, and *settle* all accounts pertaining to revenues and receipts" of the Philippine Government and of the provincial and municipal governments. Section 588 of the Administrative Code, as amended by Act No. 3066, provides that he shall have the power to *enforce the settlement* of "accounts subsisting between the different bureaus or offices of the Insular service; between any such bureau or office and any provincial, municipal, and city governments; between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments."

Section 24 of the Organic Act also empowers the Auditor to summon "witnesses, administer oaths, and to take evidence, and in the pursuance of this provision may issue subpœnas and enforce the attendance of witnesses." The same section, in connection with section 25 of the Act, provides that the Auditor's *decision* "shall be *final and conclusive* upon the executive branches of the Government" subject to an appeal to the Governor-General. (The difference in language between this provision and the corresponding statutory provisions with reference to the powers of Auditors in the United States, is not without significance: here, the statute speaks of the *decisions* of the Auditor; there, it is provided that *the balances which may from time to time be certified by Auditors* . . . shall be final and conclusive upon the executive branch of the Government . . .)

It must be borne in mind that the jurisdiction of territorial courts is not specifically determined by the United States Constitution and that Congress, therefore, in the exercise of its plenary power to provide for the government of territories, may lawfully impose limitations upon the jurisdiction of the Philippine judiciary and if it so sees fit, may invest executive

officers with judicial functions and place corresponding limitations on the jurisdiction of the ordinary courts. This being true, there can, of course, be no question as to the constitutionality of the provision last quoted from the Organic Act and that it must be given full force and effect. It is so clear and positive as to admit of no special interpretation and must be taken to mean exactly what it says, namely, that the Insular Auditor is vested with final and conclusive jurisdiction over questions of accounting between two or more executive branches of the Government, subject only to the right of appeal to the Governor-General. It follows that once the Insular Auditor has taken jurisdiction over a matter of that character, the ordinary courts cannot interfere, at least not until the remedy by appeal to the Governor-General is exhausted.

It is suggested in the decision of the court (1) that neither the City of Manila nor the Metropolitan Water District are executive branches of the Government, and (2) that the subject-matter of the controversy is not an account within the meaning of section 24 of the Organic Act and the Accounting Act by the Philippine Islands. Neither one of these contentions can, in my opinion, be sustained. It is true that the City of Manila, as a chartered city, has certain delegated legislative powers, but so have the ordinary municipal and provincial governments and there can be no question that the handling of funds and matters of accounting are executive functions, and that in regard to such matters the city, as an agency of the Government, must be considered a branch of the Executive Department. Moreover, for administrative purposes the city is under the direct supervision of one of the executive departments, the Department of the Interior. It is further to be noted that both the City of Manila and the Metropolitan Water District are, in their relation to the Insular Auditor, made executive branches of the Government by the provision of section 593 of the Administrative Code, as amended by Act No. 3066.

It is true that in its charter, the Metropolitan Water District is styled a public corporation and in a certain sense so it is. But it is more than an ordinary public corporation; it is also an agency of the Government and vested with gov-

ernmental powers. In common with a municipal corporation it has no stock and it is the successor of the City of Manila in the administration of the water and sewer system by the same right as that which made the chartered City of Manila the successor of the old *Ayuntamiento*. Section 3 of Act No. 2832 as amended provides that certain officers of the Insular Government and of the City of Manila, together with a resident taxpayer to be appointed by the Governor-General, shall compose the District Board, the governing body. All this indicates that the corporation is a branch of the Government. By section 2 (*f*) of Act No. 2832 it is empowered "to construct, maintain, and operate such systems of sanitary sewers as may be necessary for the proper sanitation of the District"; this must be considered a governmental function. It is also empowered to enact such regulations as may be necessary for the sanitary protection of the watershed, reservoirs, and water mains, and for the proper operation of the sanitary sewers, and to fix penalties for the violation of the regulations thus enacted (section 2 (1) of Act No. 2832). Certainly the power to enact coercive regulations and to provide and impose penalties is a governmental function and a prerogative or attribute of the State.

It is further to be noted that the corporation is by law placed under the control, direction, and general supervision of the Secretary of the Interior; that is, employees are all under the civil service regulations; and that all of its accounts are audited by the Insular Auditor. As already stated, in its relations to the Insular Auditor it is also made an executive branch of the Government by section 593 of the Administrative Code as amended. In these circumstances it can hardly be seriously contended that it is not a branch of the Government or a governmental agency.

Neither will the assertion that the claim of the Metropolitan Water District against the city is not an account survive an examination. In its ordinary acceptation the word "account" denotes a statement of debits and credits. The number of items in the statement does not affect its character as an account. Bouvier, citing authorities, says:

"An open account is one in which some term of the contract is settled by the parties, whether the account consists of one item or many."

The fact that all the credit items are in favor of the party who presents the statements is immaterial; accounts need not necessarily be mutual. In the language of the Court in the case of Donley *versus* Bailey (48 Col. 373):

"The word 'account' has various meanings, and is used in a variety of ways and senses . . . An account arises out of contract or some fiduciary relation. Its ordinary commercial usage is to refer to a claim or demand growing out of the sale of goods, performance of services, and the like. When used alone, without words of limitation, extension, qualification, or explanation, it is sometimes equivalent to the word 'claim' or 'demand,' when referring to an indebtedness arising out of contract or some fiduciary relation." (Citing Morrisette *vs.* Wood, 128 Ala. 503; So. Kan. Ry. Co. *vs.* Gould, 44 Kan. 68.)

In this case we have the following situation: The Metropolitan Water District has rendered certain services to the city for the benefit of its inhabitants; the city has accepted the services and its liability, if any, to pay for them is necessarily founded upon an implied contract. The Water District has from time to time presented its statements of the services and charges to the city and for auditing purposes these statements, arising, as they do, out of an implied contract, are accounts. It is to be observed that the city does not dispute the correctness of the statements, but simply denies *in toto* its liability to pay for services received. But the fact that the party to whom an account is rendered denies his liability for items arising out of a contract express or implied, does not affect the character of the account as such; it is precisely in regard to disputed items that the judicial or quasi-judicial functions of the Insular Auditor are exercised. I am not here speaking of items involving claims for damages or other matters arising *ex delicto*.

As far as I can see there can therefore be no question that for accounting purposes the Insular Auditor had original and the Governor-General appellate jurisdiction over the mat-

ter here in controversy. By holding that the courts may intervene before the Governor-General has had an opportunity to pass upon the decision or ruling of the auditor, this court virtually deprives him of his appellate jurisdiction and it seems to me that the principle announced by the United States Supreme Court in the case of Baltimore & Ohio Railroad Company *versus* Pitcairn Coal Co. (215 U. S. 481) is fully applicable to the present case. That case involved a question of alleged unjust discrimination in the distribution of coal cars by the railroad company, a matter within the administrative jurisdiction of the Interstate Commerce Commission. Instead of going to the Interestate Commerce Commission, the complainant, the Pitcairn Coal Co., filed a petition in mandamus in the United States Circuit Court for the District of Maryland. That court granted the petition and ordered the issuance of the writ in reliance on section 23 of the Interstate Commerce Act (Act of Congress of February 4, 1887) which reads as follows:

"SEC. 23. That the Circuit and District Courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act of which this is a supplement and all acts amendatory thereof as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be

held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement."

Upon appeal, the Supreme Court reversed the decision of the Circuit Court and held that the courts could not interfere by writ of mandamus until after the matter in controversy had been acted on by the Interstate Commerce Commission. Speaking through Chief Justice White, the Court said:

"When the situation is thus defined we see no escape from the conclusion that the grievances complained of were primarily within the administrative competency of the Interstate Commerce Commission and not subject to be judicially enforced, at least until that body, clothed by the statute with authority on the subject, had been afforded by a complaint made to it the opportunity to exert its administrative functions."

The practical considerations informing the decision in the Pitcairn Coal Co. case exist to an equal extent in the present case. It is further to be observed that in the former case the courts were expressly authorized by law to issue writs of mandamus to common carriers in matters falling within the administrative jurisdiction of the Interstate Commerce Commission; here, the Insular Auditor and the Governor-General are by Act of Congress expressly given *exclusive* and *conclusive* jurisdiction over accounts between the various branches of the Government, which, as we have seen, includes the Metropolitan Water District as well as the City of Manila. In this respect, at least, this case is more favorable to the respondents.

The object of Congress in conferring exclusive jurisdiction over such accounts upon administrative or executive officials is sufficiently obvious: It can manifestly serve no useful purpose to have the various executive branches of the Government waste energy, money and time in more or less futile litigation in regard to matters of accounting; they are all agencies of the same Government and in the last analysis subsisting on Government funds. The Governor-General is vested with "the supreme executive power" (Organic Act, section 21) and by himself and through his subordinates, is ordinarily in a better position than are the ordinary courts

to adjust differences between such agencies as to disposition of funds and the accounting therefor.

If this court can by mandamus deprive the Chief Executive of any of his constitutional prerogatives, the courts of first instance can do likewise. That this will not make for efficiency in administration, but will cause confusion and in cases such as the present tend to disrupt the government accounting system can hardly be doubted. Congress in the exercise of its plenary powers over territorial governments has deemed the appeal to the Governor-General an adequate mode of testing the validity of the decisions of the Insular Auditor and has made the remedy exclusive and its views should be respected by this court.

The majority opinion contains various statements which may create erroneous impressions. It is thus asserted that the ruling of the Auditor in this case was not delivered upon due process of law. In regard to this it may be observed that the point is not raised by the petitioner and that the presumption is that the proceedings were regular. In these circumstances the burden is not on the respondents to show affirmatively that there was due process of law. As far as the record shows the process may have been sufficient. The answer alleges that the Insular Auditor, "after due study of the claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that the claim was just, legal, and proper," and that he thereupon "made demand upon the City of Manila for the payment and settlement of the claim, advising the city that upon failure of payment, he would exercise the power vested in him by section 588 of the Administrative Code as amended by section 1 of Act No. 3066, but the city refused to comply with said demand." This would seem to indicate that the parties were heard before the ruling was made. There is nothing to the contrary in the pleadings. Summary processes are not necessarily unjust or unconstitutional or open to the objection that they deprive persons of their property without due process of law (McMillen *vs.* Anderson, 95 U. S. 37).

The statement that the money claimed by the city "was assessed, levied, and collected for a specific purpose and for

such reason it should 'be treated as a special fund in the treasury and paid out for such purpose only' " is likely to be misunderstood. The money consists of so-called provincial and municipal allotments. Two-thirds of the city's allotments accrues to its general funds and may be made available for the payment of the account of the Metropolitan Water District (sections 491, 492, 494, and 495 of the Administrative Code).

The money is now in the Insular Treasury as a credit in favor of the city and there is some merit in the contention that the Auditor has no power to order it paid directly from the Treasury to the Metropolitan Water District without a previous appropriation by the Municipal Board, and if this court had jurisdiction of the case, it would no doubt have the power to issue a writ of injunction to the Insular Treasurer restraining him from making such payment. But that does not necessarily mean that the Insular Auditor may not decline to countersign a warrant for the transfer of credits from the Insular Treasury to a Government agency who fails or refuses to meet its financial obligations to another Government agency; that is another and entirely different matter.

By section 588 of the Administrative Code as amended by Act No. 3066, the Insular Auditor is empowered to *enforce* the settlement of accounts subsisting between the various Government agencies. He cannot issue writs of mandamus or injunctions and, as far as I can see, the only means within his reach for enforcing settlement of such accounts by a recalcitrant Government agency, is to prevent the transfer to it of credits in the Government treasury which might otherwise be made available for the payment of the accounts. A debt to an agency of the Government may be said to be in effect a debt to the Government itself and it seems reasonable to require that before the debtor can demand payment of his credits from the Government, he must make provisions for paying the debt. In these circumstances, can the Insular Auditor be compelled by mandamus to lend his coöperation to the transfer of such credits to a defaulting debtor and thus incur the risk of having them dissipated for other purposes before any attempt is made to pay the debts? I do not think that such a state of affairs can have been contemplated either by Congress or by the Legislature.

I may say further that unless Act No. 2832, the Charter of the Metropolitan Water District, is unconstitutional—and I do not think it will be so held—the excuse offered by the city for not settling the account here in question is to my mind nothing but a flimsy pretext. If the city upon such pretexts can prevent the Insular Auditor from exercising his functions, other Government agencies may do the same, and the result can be nothing but confusion and delay in the settlement of Government accounts. An Act of the Legislature is presumed to be valid and until it is shown to be otherwise, the Auditor is justified in following its provisions. If the city desires to test the constitutionality of the statute in question, it should be required to do so by an action at law before being permitted to use the alleged unconstitutionality as an excuse for the non-payment of its debt.

Much more might be said in regard to the merits of the case, and the temptation to do so is strong, but for the sake of brevity I shall refrain from further discussion. Suffice it to say that the errors alleged to have been committed by the Insular Auditor might have been corrected by an appeal such as provided for in the Organic Act. We have no right to presume that the Governor-General would not have given due consideration to the petitioner's claim if they had been properly brought to his attention upon such appeal.

By way of recapitulation, my conclusions are that this court has no jurisdiction to entertain a petition such as that in the present case before the remedy of appeal to the Governor-General has been exhausted; that while the Insular Auditor may not have the power to order that the funds here in question be paid to the Metropolitan Water District without a previous appropriation by the Municipal Board of Manila, he may nevertheless in the exercise of his power to enforce settlement of a disputed account decline to countersign a warrant for the transfer of the funds from the Insular Treasury to the city; that assuming without conceding that the court has jurisdiction over the case, it can only enjoin the Insular Treasurer from paying the funds to the Metropolitan Water District without previous appropriation, but has no power to compel the Insular Auditor to countersign a warrant for the transfer of the funds to the city; and that

the court in assuming jurisdiction over the case has in effect undertaken to deprive the Chief Executive of jurisdiction expressly conferred upon him by constitutional statutes and has to that extent committed an encroachment upon the domain of a coördinate department of the Government, and has arrogated to itself powers not conferred on it by Law. I do not maintain that a decision of the Insular Auditor or of the Governor-General would be conclusive as to the *title* to the property in dispute between the city and the Water District.

JAMES A. OSTRAND
Associate Justice

STREET, *J.*, concurring in the result:

As a matter of practice, I should have preferred to overrule the demurrer to the answer, requiring the parties to submit the cause on an agreed statement of facts or upon such proof as they might have seen fit to adduce before our commissioner. The majority, however, find sufficient admissions in the answer to define the issues; and as the parties may be supposed to be desirous of having the case settled speedily on the merits, I waive my views on this point.

Confining myself to the principal features of the case, I will say that the so-called "special defense" contained in the answer and the accompanying exhibits show in my opinion that the City of Manila is liable for the value of the water supplied to it by the Metropolitan Water District for use in fighting fires and sprinkling streets. All administrative officials, whether supporters of the city in the present contention or not, have so assumed; and this is in conformity with justice and the letter of the law. I am further of the opinion that the administrative authority of the Auditor over the Metropolitan Water District is co-extensive with his authority over the city and other branches of the public service; and he has the same power to enforce the settlement of accounts with respect to this entity as he has with respect to provinces and chartered cities. It seems to me, however,—and upon this decisive point I concur with the majority,—that the power to enforce the settlement of accounts does not include the power to divert funds from the city treasury in the man-

ner now threatened. The Insular Auditor certainly does not have the power to put his hands into the city treasury and take out money to pay its debts however meritorious the obligation; and if he does not have this power he cannot intercept and divert funds in course of transmission to the city. Lastly, it is my opinion that the provision of section 3 of the Jones Law which declares that the money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only is not pertinent to the case, since the money with which we are now dealing was not levied or assessed for a special purpose. The revenue allotments are taken from the general fund in the Insular Treasury, collected under general laws; and said allotments accrue to the general funds of the city, except as to one-half of the municipal allotment, which is applied by law to the school fund of the city. (See secs. 490, 492, 494, Admin. Code.) Of course this part of the allotment to the city could not in any event be diverted by the Insular Auditor to the payment of the city's indebtedness to the Metropolitan Water District.

THOS. A. STREET

On December 2, 1925, the respondents by their attorney filed with the Supreme Court the following exception to the above decision and motion for reconsideration thereof:

[CAPTION AND TITLE OMITTED]

EXCEPTION AND MOTION FOR RECONSIDERATION

Come now the respondents in the above-entitled action and to the Honorable Court respectfully state that they are unable to amend their answer; and, praying that the decision rendered in the present case be accordingly considered final, they except to said decision and move the court for a reconsideration of same upon the grounds that the admitted facts are insufficient to justify said decision and that it is contrary to law.

Manila, December 2, 1925.

DELFIN JARANILLA
Attorney-General

Received copy this 2nd day of December, 1925.

CITY FISCAL
Attorney for Petitioner
By (Sgd.) JOSE MA. PAREDES

On December 3, 1925, the Supreme Court adopted the following resolution:

Considering the motion of the Attorney-General filed in case G. R. No. 23551, the City of Manila *versus* Juan Posadas *et al.*, excepting to the decision rendered therein and praying that the same be reconsidered, *exception noted* and motion for reconsideration *denied*, Ostrand, *J.*, dissented, and Johnson and Villa-Real, *JJ.*, took no part.

On December 7, 1925, the respondents filed with the Supreme Court the following exception and motion for stay of execution of judgment:

[CAPTION AND TITLE OMITTED]

Come now the respondents and except to the resolution of this Court denying their motion for reconsideration of the decision rendered in the above-entitled action, and also except to the final judgment entered therein.

Notice is hereby given that the respondents intend to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this Court in the present case.

Respondents respectfully pray for a stay of execution of the judgment rendered herein during the pendency of the application for the writ of certiorari and of the proceedings in the Supreme Court of the United States.

Manila, December 7, 1925.

DELFIN JARANILLA
Attorney-General

Received copy this 7th day of December, 1925.

CITY FISCAL
Attorney for the petitioner

On December 16, 1925, the Supreme Court passed the following resolution:

Upon consideration of the motion of the respondents filed in case G. R. No. 23551, The City of Manila *versus* Juan Posadas, Jr., *et al.*, excepting to the decision of this court in denying their motion for reconsideration as well as to the final judgment; giving notice of their intention to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this court, and praying for a stay of the judgment of this court during the pendency of the application for the writ of certiorari and of the proceedings in the Supreme Court of the United States, and after considering the petitioner's objection thereto; it is ordered that the exception be noted, and a stay of the mittimus or of the execution of the judgment heretofore entered therein is hereby granted. Johns, J., dissented.

On December 21, 1925, the Supreme Court entered the following final judgment:

[CAPTION AND TITLE OMITTED]

The court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on the twenty-fourth day of November, A. D. nineteen hundred and twenty-five:

By virtue thereof it is hereby adjudged and decreed that the demurrer, in so far as it alleges that the answer does not allege facts sufficient to constitute a defense, be sustained as to the special defense plead in the answer, and unless the defendants shall within ten (10) days amend their answer, so as to cure the defects pointed out in this decision, the petition prayed for shall issue as follows:

First, that a writ of mandamus shall issue "ordering the respondent Collector of Internal Revenue to issue in favor of the petitioner, and not to the Metropolitan Water District, all the warrants which he ought to issue for the share of the petitioner in the internal revenue collections and in whatever other fiscal collections to which said petitioner is, by law, entitled";

Second, that a writ of mandamus shall issue "ordering the respondent BEN F. WRIGHT, Insular Auditor, his deputies, agents, employees or other persons acting in his stead, to countersign and approve any check, warrant or order of payment which the respondent Collector of Internal Revenue may issue in favor of the petitioner for such sum of money as represent its share or allotment in the internal revenue collection and in the special tax imposed by Act No. 3065."

That the temporary injunction heretofore issued by the Vacation Justice shall be, and is hereby, made permanent, and in all other respects, the prayer of the petitioner is denied. Neither party to recover costs.

(Sgd.) V. ALBERT
Clerk, Supreme Court, P. I.

Certified correct:

V. ALBERT
Clerk, Supreme Court, P. I.

On February 26, 1926, upon motion of the respondents Juan Posadas *et al.*, the Supreme Court passed the following resolution:

Upon consideration of the motion of the Attorney-General filed on behalf of the respondents in case R. G. No. 23551, The City of Manila *vs.* Juan Posadas, Jr., as Collector of Internal Revenue, *et al.*, praying, for the reasons given, that this Court enter an order for the stay of the execution of the final judgment entered therein on December 21, 1925, motion granted.

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

I, V. Albert, clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing

ninety-one (91) printed pages contain a true and correct transcript of the record of the case entitled City of Manila *versus* Juan Posadas, Jr., Collector of Internal Revenue, *et al.*, concerning a petition for *mandamus*, bearing No. 23551 of the General Register of this Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this 4th day of ...March....., A. D. nineteen hundred and twenty-six.

V. ALBERT
Clerk, Supreme Court of the Philippine Islands

○

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 1, 1926

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2377)

FILED
MAY 4 1926
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

No. 11[redacted] 363

JOAN POSADOS, JR., AS COLLECTOR OF INTERNAL REVENUE, BEN F. WRIGHT, AS INSULAR AUDITOR, VICENTE CARMONA, AS INSULAR TREASURER, and the METROPOLITAN WATER DISTRICT, *Petitioners*,

vs.

THE CITY OF MANILA, *Respondent*.

Petition for a Writ of Certiorari to the Supreme Court of the Philippine Islands.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

No. ———

JOAN POSADOS, JR., AS COLLECTOR OF INTERNAL REVENUE, BEN F. WRIGHT, AS INSULAR AUDITOR, VICENTE CARMONA, AS INSULAR TREASURER, and the METROPOLITAN WATER DISTRICT, *Petitioners*,

vs.

THE CITY OF MANILA, *Respondent*.

Petition for a Writ of Certiorari to the Supreme Court of the Philippine Islands.

To The Honorable,
The Chief Justice and Associate Justices
of the Supreme Court of the United States:

Petitioners, Joan Posados, Jr., as Collector of Internal Revenue, Ben F. Wright, as Insular Auditor, Vicente Carmona, as Insular Treasurer, and the Metropolitan Water District, of the Philippine Islands, respectfully petition this Honorable Court for a writ of certiorari to review the judgment of the Supreme Court of the Philippine Islands in the case entitled The City of Manila, Petitioner (Respondent

here) vs. Joan Posados, Jr., as Collector of Internal Revenue, Ben F. Wright, as Insular Auditor, Vicente Carmona, as Insular Treasurer, and the Metropolitan Water District, Respondents (Petitioners here), No. 23551.

I.

THE CASE.

By Act No. 2832 (March 6, 1919) the Philippine Legislature created "a public corporation" known as the Metropolitan Water District (hereinafter referred to as Water District), and under the control, direction and general supervision of the Secretary of the Interior of the Philippine Islands. The area within which it operates includes the City of Manila and certain contiguous municipalities (Section 1). Its powers, functions, and activities, exercised by a board called the District Board, among other things, include the construction, maintenance and operation of a water system for the purpose of supplying water to the inhabitants of the District, both for domestic and other purposes, and the fixing and providing for the collection of charges therefor (Section 2). The Act authorizes and directs the District Board to receive and assume on behalf of the Water District all assets and liabilities pertaining to the water works system of the City of Manila (hereinafter referred to as City) (Section 8), and further provides that the Water District "shall own and control all the * * * water distributing systems of the City of Manila and all the municipalities comprising the District, and shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution." (Section 9.)

Since the Water District commenced functioning under the foregoing authority in 1919, it has furnished water service to the City. For some of this water service the City has paid the Water District, but for certain of the water

service so furnished, including water for use in fighting fire, sprinkling streets, and in public fountains, the City refused and continues to refuse to pay, claiming it is entitled to such water service free of charge.

After repeated demand in vain for payment the Water District reported the matter to the then Insular Auditor, E. M. Fullington, who on January 9, 1922, under Section 588 of the Administrative Code of the Philippine Islands, which gave him the power "to authorize and enforce settlement of accounts subsisting between the different bureaus and offices of the Insular Service or between any such bureau or office and any provincial or municipal government," authorized the Collector of Internal Revenue (hereinafter referred to as the Collector) to draw warrants in favor of the Water District against the City's apportionment of internal revenue collections in the Insular Treasury, in settlement of part of the accounts of the Water District against the City. The warrants were drawn and were countersigned by the Auditor and the amounts thereof transferred to the credit of the Water District and charged against the allotment of the apportionment of the City.

The Water District continued to furnish water service to the City, the latter continued its refusal to pay as above indicated, and the present Insular Auditor (Petitioner) (hereinafter referred to as the Auditor) continued to "enforce the settlement" of the accounts subsisting between the Water District and the City in the manner above indicated until just prior to the commencement of this action. In the meantime the status of the City and the Water District under the Accounting Law had been definitely fixed by Act No. 3066 (1923) amending Section 593 of the Administrative Code, which provides that "the chartered cities (of which the City of Manila is one) and the Metropolitan Water District * * * shall be regarded as provinces." By the same Act (No. 3066), the powers of the Auditor defined in Section 588 of the Administrative Code, *supra*, were amplified so as to give him power "to authorize and enforce the

settlement of accounts subsisting * * * between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments."

On November 10, 1924, the City Fiscal wrote to the Collector protesting against applying any portion of the City's share of the proceeds of internal revenue collections in the Insular Treasury to the payment of bills for water service to the Water District, and requesting "that from now on you refrain from making further payments out of this fund belonging to the City of Manila," and that warrant for the quarter July to September, 1924, be issued in favor of the City. (R. 18-19.) On January 5, 1925, the Collector advised the City Fiscal that pursuant to instructions from the Auditor, and after ten days, he would issue warrants for the fourth quarter of 1924 in favor of the Water District and against the City's apportionment of the internal revenue collections in the Insular Treasury. (R. 19-20.)

II.

THE PROCEEDINGS.

On January 8, 1925, the City instituted this proceeding in the Supreme Court of the Philippine Islands. (R. 3.) Its petition, amended on January 10, 1925, sets forth the facts substantially as stated above herein, but alleges that the Water District is neither a governmental entity, nor office, nor branch of the Insular Government; that there exists no account between the Water District and the City the settlement of which the Auditor can legally authorize or enforce; that as fiduciary of the Carriedo funds and as owner of the Montalbon water system the City was and is entitled to the free use of water from said systems; that the City owed the Water District nothing by way of the alleged water service rendered by the Water District to the City; that the Water District was not the owner of the water system, but merely had the possession, administration, control and manage-

ment thereof; that one of the liabilities of the water system of the City assumed by the Water District was that of furnishing water free to the City for all its uses and needs; that even if the Auditor is empowered to settle the accounts outstanding between the City and the Water District, he is not authorized to settle an account which is disputed on the ground that it is not authorized by law; that in any event the issuance of warrants by the Collector for the allotments of internal revenue apportionment is a ministerial duty, the performance of which the Auditor is not authorized to prevent or control; but that unless prevented by the court the warrants will continue to be issued to the Water District, as set forth above, to the irreparable damage of the City; and prays for a preliminary injunction restraining the acts complained of during the pendency of this action; and upon the hearing of the case for a writ of mandamus ordering the Collector to issue thereafter all warrants for the City's apportionment of internal revenue collections to the City, and ordering the Auditor to countersign and approve such warrants so issued to the City, and for a permanent injunction restraining the Water District from claiming, charging or collecting from the City any amount for water service, theretofore or thereafter rendered. (R. 3-16.)

On January 8, 1925, the Supreme Court of the Philippine Islands issued an order of injunction, which on January 10, 1925, was superseded by a preliminary injunction restraining the Insular Treasurer from paying any warrant issued by the Auditor or the Collector in favor of the Water District "against the funds belonging to the petitioner (City of Manila) as its allotment of the internal revenue collections and of the special assessments provided for in Act No. 3065, during the pendency of this case." (R. 20-21.)

To the foregoing petition the respondents (petitioners here) demurred. (R. 21-22.) On September 22, 1925, the court, Justice Villa-Real taking no part having represented the respondents as Attorney General, and Justices Johnson and Ostrand dissenting, overruled the demurrer. (R. 23.)

Whereupon the respondents (petitioners here) on October 1, 1925, filed their answer in which they generally deny the above allegations of the petitioner, except as they are admitted in their special defense which alleges substantially that the Water District has been furnishing and rendering water service to the City since 1919, for which it has rendered bills to the City; that the City paid a part of the bills, but refused to pay others; that the Water District advised the Auditor of the refusal by the City to pay such bills, requesting him to enforce the adjustment and settlement of said outstanding accounts; that the Auditor, after due study of the claims of the Water District against the City, taking into consideration the conflicting contentions of both parties, reached the conclusion that said claims were just, legal and proper, made demand upon the City for payment and settlement of same, and advised the City that if it failed so to do he would exercise the power vested in him by Section 588 of the Administrative Code, as amended, *supra;* that the City refused to comply with said demand, whereupon the Auditor instructed the Collector that thereafter and until further notice, all warrants covering the internal revenue collections allotted to the City be drawn in favor of the Water District; that the Collector advised the City that within the specified time he would issue the warrants as directed by the Auditor; that the Collector was prevented from so doing by the preliminary injunction in this case; and pray for dismissal of the City's petition. (R. 24-27.)

The City demurred to the special defense of above answer. (R. 44-51.) On November 25, 1925, the court, Justices Johnson and Villa-Real taking no part (R. 77), Justice Street concurring in the result, and Justice Ostrand dissenting (R. 78-87), sustained the demurrer, and gave the respondents ten days to amend their answer or the prayer of the petition would be granted in part. (R. 51-77.) The respondents informed the court they were unable to amend their answer, prayed that the decision be considered final,

excepted thereto and moved for a reconsideration thereof. (R. 88.) Reconsideration was denied, Justices Johnson and Villa-Real taking no part, and Justice Ostrand dissenting. (R. 89.) On December 21, 1925, the court rendered judgment directing that the preliminary injunction be made permanent; that a writ of mandamus issue "ordering the respondent, Collector of Internal Revenue to issue in favor of the petitioner (City of Manila), and not to the Metropolitan Water District, all the warrants which he ought to issue for the share of the petitioner in the internal revenue collections and in whatever other fiscal collections to which said petitioner is, by law, entitled;" that a writ of mandamus issue "ordering the respondent Ben F. Wright, Insular Auditor, his deputies, agents, employees or other persons acting in his stead, to countersign and approve any check, warrant, or order of payment which the respondent Collector of Internal Revenue may issue in favor of the petitioner (City of Manila) for such sum of money as represents its share of allotment in the internal revenue collections and in the special tax imposed by Act No. 3065." (R. 90-91.)

The grounds for the decision as stated by the court are briefly as follows:

(1) That the money against which such warrants were to be drawn is the allotment of the City from the "internal revenues collected under the laws of the Philippine Islands" (Section 490, Administrative Code, 1917); that it is public money assessed, levied and collected for a specific purpose and should "be treated as a special fund in the treasury and paid out for such purposes only" (Section 3, Act of August 29, 1916, 39 Stat. 554, hereinafter referred to as Organic Act), and was held in the treasury of the government in trust for the sole use and benefit of the City; that the City is entitled to receive the money quarterly "upon warrants drawn by the Collector of Internal Revenue." (Section 497, Administrative Code, 1917.) (R. 64.)

(2) That neither the Auditor nor any other person has

any authority to take money out of the treasury of the Government for any purpose, "except in pursuance of an appropriation by law," and no appropriation was ever made by the government or by the City to pay the claim of the Water District against the City. (R. 65-72.)

(3) That the Water District is a public corporation, and even if the Auditor has any authority to enforce settlement between governmental entities, he has no power to compel a municipal corporation to pay a claim to a public corporation where the former disputes the claim. (R. 69-73.)

(4) That the account involved between the City and the Water District is not one of accounting but is one of legal liability (R. 69).

(5) That the Auditor is not vested with judicial powers (R. 70).

(6) That if the Auditor is vested with judicial power his actions in this case involve the taking of property without due process of law. (R. 72.)

(7) That the decisions of the Auditor are final and conclusive only upon the "executive branches of the Government," and do not bind the courts. (R. 73.)

(8) That the City is not included within the term "executive branches of the Government," in so far as the powers of the Auditor are concerned. (R. 73-74.)

(9) That the City is legally entitled to the possession of the funds in question, and the decision of the Auditor to divert the funds to the Water District is null and void. (R. 76.)

III.

THE QUESTIONS PRESENTED.

(1) The extent of the powers of the Auditor to authorize and enforce settlement of accounts subsisting between the governmental branches of the Philippine Islands, and whether such powers are discretionary and quasi judicial.

(2) The extent of the powers of the Supreme Court of the Philippine Islands to interfere with or control the Auditor in the exercise of the above powers.

(3) Whether the method of enforcement of the settlement of the accounts subsisting between the City and the Water District used by the Auditor was the taking of the property of the City without due process of law.

(4) Whether the remedy of the City is not limited to an appeal to the Governor General and the Secretary of War pursuant to Section 25 of the Organic Act, or to the Philippine Legislature.

(5) The meaning of the term "accounts" as used in the Accounting Law and in Section 24 of the Organic Act.

(6) The meaning of the provision of section 24 of the Organic Act that the Auditor "shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine Government, and of the provincial and municipal governments of the Philippines, * * *; and audit * * * all expenditures of funds or property pertaining to * * * the government or the provinces or municipalities thereof," when considered together with the provisions of Section 588 of the Administrative Code, as amended, empowering the Auditor "to authorize and enforce the settlement of accounts subsisting * * * between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments."

(7) Whether the finality and conclusiveness of the Auditor's decisions upon the executive branches of the Government under the law apply to the provinces, municipalities and cities of the Philippines, in view of the fact that certain legislative functions are delegated to the boards or councils of such entities.

(8) Whether the plenary power of the Philippine legislature over the finances and revenues of the City can not be exercised by and through an official, expressly so authorized by said legislature.

(9) Whether the City can maintain this action at all, the same being instituted by one government branch against other branches and officers of the same government, which is a government with a centralized administration.

IV

THE REASONS FOR GRANTING THE WRIT.

1. The general importance to the relation of the United States with the Government for the Philippine Islands of the following questions:

(a) Whether the Supreme Court of the Philippine Islands has jurisdiction to require the Auditor, appointed by and holding office at the pleasure of the President of the United States, to approve the decisions of, and countersign the warrants, checks or orders drawn by the Collector.

(b) The extent of the powers of the Auditor over the settlement of accounts subsisting between the various governmental branches enumerated in Section 588 of the Administrative Code, 1917, as amended by Act No. 3066, and whether such powers are controllable by mandamus.

(c) Whether the provinces, municipalities and cities of the Philippine Islands are to be considered as parts of the executive branches of the Government in so far as the finality and conclusiveness of the Auditor's decisions upon the executive branches of the Government are concerned.

(d) Whether the decisions and acts of the Auditor in the enforcement of "the settlement of accounts subsisting" between the various bureaus, offices, and provincial, municipal and city governments, and particularly "between provincial governments" are controllable by the Supreme Court of the Philippine Islands by mandamus.

(e) Whether by reason of the fact that certain legislative powers have been delegated to the various provincial, municipal and city governments of the Philippines, the decisions of the Auditor in the settlement of accounts subsisting between such branches, are stripped of the finality and conclusiveness with which they are clothed by the Organic Act, in spite of Section 17 of the Administrative Code, 1917, which provides:

"The executive authority is vested in the following agencies; * * * the provincial and local governments * * * in the exercise of the administrative powers conferred on them. The legislative power is vested in the Philippine legislature."

2. The general importance to the administration of the Insular Government under the Organic Act and laws of the Philippine Legislature of a conclusive determination of the following matters:

(a) The meaning as used in said laws of the terms "accounts," "settlement of accounts" and "executive branches of the Government."

(b) The status of the provincial, municipal and city governments, and particularly of the City and the Water District in the administration of the Accounting Law.

(c) The means which the Auditor may use in enforcing settlements of accounts subsisting between the governmental branches.

3. The failure of the court below to comprehend the effect of the methods of enforcement of settlements used by the Auditor in this case; and the disregard by the court of the fact that such methods are in accord with the practice which has been followed without question by the accounting officers of the United States for a century.

4. The disregard of the applicable decisions of the Supreme Court of the United States in *United States v. Railroad Company* (84 U. S. 322, 329), *New Orleans v. Clerk* (95 U. S. 654), and *United States v. Realty Company* (163 U. S. 443), that a municipal corporation is a creature of the State (Philippine Government), which the State at pleasure may govern and control through its legislature or channels chosen by the legislature.

5. The disregard of the applicable decision of the Supreme Court of the United States in *Barnes v. District of Columbia* (91 U. S. 540, 543), that in so far as the character of the powers of officers of a city are concerned it makes no

difference whether they are appointed by the executive of the state or government, chosen by the Congress or legislature, or elected by the people of the municipality.

6. The disregard of the fundamental principle of law that not all of the acts of a city council or municipal board are legislative, but many of their acts are executive and their acts in passing upon claims against the city or municipality belong to the latter class.

7. The disregard of the applicable decisions of the Supreme Court of the United States in *Gaines v. Thompson* (7 Wall. 347), *Lee v. Johnson* (116 U. S. 48), and *Orchard v. Alexander* (157 U. S. 372), that because duties of executive officers in the administration of the law require in their performance the examination and consideration of evidence and the exercise of judgment thereon, they are none the less executive duties.

8. The disregard of the applicable decision in *Murray's Lessee et al v. Hoboken Land and Improvement Company* (59 U. S. 272), (a) that administrative duties, such as the auditing of accounts, may involve on the part of an executive officer the exercise of judgment upon both law and fact, may be, in the enlarged sense, judicial acts, but that is not sufficient to bring such matters under the judicial powers; (b) that "due process of law" does not necessarily require "actor, reus, judex, regular allegations, opportunity to answer, and trial according to some settled course of judicial proceeding."

9. The disregard of the applicable decisions of the Supreme Court of the United States in *Dunlap v. Black* (128 U. S. 40), and *Redfield v. Window* (137 U. S. 636), that mandamus will lie to compel the performance only of duties the performance of which the law requires without further question, but the courts will not interfere by mandamus with the executive officers of the government in the exercise of their ordinary official duties, even where those duties require an interpretation of the law.

10. The disregard of the applicable decision of the Su-

preme Court of the United States in *Metropolitan Railroad v. District of Columbia* (132 U. S. 1, 8), that through motives of expediency including the necessity of high executive ability in dealing with particular populations, the administration of the affairs of a municipal corporation, or some portion thereof, is not infrequently given over to officials appointed by the legislature or executive of a state.

11. The disregard of the applicable decisions of the Supreme Court of the United States in *Brashear v. Mason* (6 Howard 92), and *Decatur v. Paulding* (17 Howard 294), that where consent has not been given to sue the Government, moneys to the credit of general appropriations in the Treasury may not be controlled by extraordinary judicial process directed against officers of the Government, the situation with respect to suits against the Government for the Philippine Islands being the same as that existing prior to the creation of the Court of Claims in 1855 for suits against the United States.

12. The disregard of the applicable decision of the Supreme Court of the United States in *United States v. Lynch* (137 U. S. 280), that even after the Government had consented to be sued, the auditors and comptrollers of the United States Treasury may not be controlled by extraordinary judicial process in the settlement of claims and countersignature of warrants chargeable to general appropriations in the United States Treasury, Section 24 of the Organic Act providing that the Auditor for the Philippine Islands, except as to appeal to the Governor General and Secretary of War, shall have "like authority as that conferred by law upon the several auditors of the United States and the Comptroller of the United States Treasury." The exception referred to is not a limitation of the authority of the auditor for he, in fact and in law, has greater powers than the former auditors and comptrollers of the United States Treasury.

13. The disregard of the applicable decision of the Supreme Court of the United States in *Work v. United States,*

ex rel Rives (267 U. S. 175), that extraordinary judicial process cannot be invoked to operate as a writ of error to review the discretionary acts of public officers.

14. The absence of a justifiable controversy.

15. The disregard of the applicable decisions of the Supreme Court of the United States in *Ekiu v. United States* (142 U. S. 161), and *Baltimore and Ohio Railroad v. Pitcairn Coal Co.* (215 U. S. 481), that there can be no resort to extraordinary judicial process even in an otherwise proper case until exhaustion of administrative remedies.

Wherefore, it is respectfully submitted that the writ of certiorari should issue as prayed.

L. H. Hedrick,
O. R. McGuire,
Attorneys for Petitioners.

The United States of America, District of Columbia, ss:

L. H. Hedrick, being duly sworn, says that he is one of the attorneys for the petitioners herein and that he has carefully read and examined the foregoing petition, that the facts therein stated are true to the best of his knowledge, information and belief, and, in his opinion, the said petition is well founded and the case is one in which the prayer of the petitioners should be granted by this Court.

L. H. Hedrick.

Subscribed and sworn to before me this 3rd day of May, 1926.

N. Curtis Lammond,
Notary Public.

My Commission expires July 16, 1929.

BRIEF IN SUPPORT OF THE PETITION.

BRIEF IN SUPPORT OF THE PETITION.

The proceedings, opinions and judgment of the Supreme Court of the Philippine Islands entered December 21, 1925, have not yet been reported. They are, however, set forth in the printed transcript of record filed in this case. (R. 3-92.)

JURISDICTION.

The petitioners apply to this Court for a writ of certiorari to review the judgment of the Supreme Court of the Philippine Islands pursuant to authority granted by Sections 7 and 8 of the Act of February 13, 1925 (43 Stat. 940).

ARGUMENT.

I.

The Auditor for the Philippine Islands is Empowered to Enforce the Settlement of Accounts Subsisting Between the City of Manila and the Metropolitan Water District, and His Decisions in Such Matters Are Final and Conclusive Upon Both the City and the Water District.

Because certain legislative powers have been delegated to the Municipal Board of the City, it does not follow that all of the acts of the Board are legislative, for many of its acts are administrative or executive.

Gallagher v. Olyphant (Pa.), 37 Atl. 258.
Jones v. Power Co. (Pa.), 51 Atl. 762.
Shelby v. City of Burlington (Ia.), 101 N. W. 101.

Its legislative powers must be exercised by ordinance, but not so its executive powers.

Atchison Board of Education v. DeKay, 148 U. S. 591, 598.
Creighton v. Manson, 27 Cal. 614, 629.
Central City v. Sears, 2 Colo. 588.
London Mills v. White, 208 Ill. 289, 297.
Kepner v. Commonwealth, 40 Pa. St. 124.

In the latter class (executive) is included the transaction of current business, the ordinary administration of municipal affairs (Jones v. Schuylkill Light, H. & P. Co. 202 Pa. 164), in which in turn is included the auditing, allowing and paying of debts incurred in the daily conduct of the City's business. Commonwealth v. Diamond Nat'l Bank, 9 Pa. Super. Ct. 118.

In so far as the administration of Chapter 26, Administrative Code, 1917, as amended by Act No. 3066 (designated by the Philippine Legislature as the Accounting Law) is concerned, both the City and the Water District are provinces, and parts of the executive branches of the Government. Section 593 of said chapter provides inter alia:

> "The provinces of the Philippine Islands, the chartered cities and the Metropolitan Water District, which shall be regarded as provinces, are hereby divided into twenty-two regular and one special auditing districts, and the Insular Auditor is hereby authorized to appoint a district auditor to each * * *. Said districts are hereby numbered, constituted, and established as follows:
>
> * * * * * * * * *
>
> Seventh: City of Manila and Metropolitan Water District."

The Auditor is empowered, generally by Section 24 of the Organic Act and specifically by Section 588 of the Administrative Code, 1917, as amended by Act No. 3066, to enforce the settlement of accounts subsisting between the City and the Water District as such provinces, and the statute provides that his decisions shall be final and conclusive upon them as upon all other executive branches of the government or parts thereof, except for the appeal to the Governor General and Secretary of War as provided by Section 25 of the Organic Act.

The City, while a political body corporate acting under a special charter (Chapter 60, Administrative Code, 1917),

and possessed of many of the powers which pertain to a municipal corporation, nevertheless is part and parcel of and a branch of the Government of the Philippine Islands. Under its charter, *supra*, its mayor is appointed by the Governor General with the consent of the Philippine Senate, and is subject to the authority and supervision of the Secretary of the Interior (Section 2434). Temporary vacancies on the Municipal Board, although the members thereof are elective, may be filled by the Governor General (Section 2439). Election ties are broken by the Governor General, and vacancies caused by ineligibility of any person elected, or by failure of election are filled by the Governor General with the consent of the Philippine Senate (Section 2440). The Secretary of the Interior has certain supervision over meetings of the Municipal Board (Section 2443). In the event of second veto of an ordinance, resolution or motion by the mayer, the Governor General has final power of approval or disapproval (Section 2443). The city fiscal and his assistants, the judge and clerk of the municipal court, the justice and auxiliary justice of the peace, the city engineer and his assistants, the chief of police and his assistant, the chief of the fire department, the city treasurer, the city assessor, and the city superintendent of schools are appointed by the Governor General with the consent of the Philippine Senate (Act No. 2991). The Insular Auditor, Insular Treasurer, Director of Education, Director of Health and Director of Prisons are ex officio officers of the City. (Article V, Chapter 60, Administrative Code, 1917). The moneys of the City must be deposited daily in the Insular Treasury or a Government depositary (Act No. 3000).

The Water District, while a "public corporation," is, as stated in the dissenting opinion in this case, more than an ordinary public corporation, being in this respect similar to the United States Shipping Board Emergency Fleet Corporation. The Water District is an agency of the Government, a Governmental entity created for a governmental

purpose is in fact a part of the executive branch of the Government, and is under the control, direction, and general supervision of the head of one of the executive branches of the Government, the Secretary of the Interior. (Section 1, Act No. 2832.) Its powers are exercised and its business managed by a board of whom all save one (President of Municipal Board of the City) are appointees of the Governor General (Section 3, Act No. 2832, as amended by Act No. 3109), and even that one may be the Governor General's appointee (Section 2440, Administrative Code, 1917). The Governor General has appellate jurisdiction over the decisions and resolutions of the Board. (Act No. 3109.) The Water District's Manager and Assistant Manager are appointed by the Governor General, by and with the consent of the Senate, and may be removed by him (Section 6, Act No. 2832).

Section 24 of the Organic Act pertinently provides:

> "That there shall be appointed by the President an Auditor, who shall examine, audit and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine Government and of the provincial and municipal governments of the Philippines, * * * and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the Government or the Provinces or municipalities thereof. He shall perform a like duty with respect to all government branches.
>
> * * * * * * * * * *
>
> The administrative jurisdiction of the auditor over accounts, whether of funds or property * * * shall be exclusive.
>
> * * * * * * * * * *
>
> The decisions of the auditor shall be final and conclusive upon the executive branches of the Government, except that appeal therefrom may be taken * * *. (To the Governor General and Secretary of War, Section 25.) In the execution of their duties the auditor

and the deputy auditor are authorized to summon witnesses, administer oaths, and to take evidence, and, in pursuance of these provisions, may issue subpoenas and enforce the attendance of witnesses, as now provided by law. The office of the auditor shall be under the general supervision of the Governor General * * *."

Section 588, Administrative Code, 1917, as amended by Act No. 3066, provides in pertinent part:

> "The Insular auditor shall have the power * * * to authorize and enforce the settlement of accounts subsisting between the different bureaus or offices of the Insular service; between any such bureau or office and any provincial, municipal, or city government; between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments."

II.

The Claim of the Metropolitan Water District Against the City of Manila Constitutes an Account as That Term is Used in the Pertinent Laws.

There can be no doubt that the Congress intended to use the term "accounts" in Section 24 of the Organic Act, *supra*, in the same sense as it is used in Section 236, Revised Statutes, as amended by the Act of July 31, 1894 (28 Stat. 205, 211) relating to the accounting officers of the United States, with respect to whose duties and powers the duties and powers of the Auditor are assimilated. So too must the Philippine Legislature have had in mind the same meaning when using the term in dealing with the same subject-matter in the Accounting Law, *supra*.

An examination of the Act of July 31, 1894, *supra*, and Section 236, Revised Statutes, is sufficient to show that *claim* and *account* are used interchangeably. So too in the administration of these laws the settlement of an account and the settlement of a claim mean one and the same thing.

2 Ops. Atty. Gen. 518, 625.
1 First Comp. Dec. (2 Ed.) 512.

And this has been recognized by the Courts.

McKnight v. United States, 13 Ct. Cls. 292.
United States v. Harmon, 147 U. S. 268.

Mutuality is not necessary to constitute an account as the Supreme Court of the Philippine Islands has held in this case. There have been isolated cases that confine *account* to its derivative meaning, but common business practice as well as the great weight of judicial authority are to the contrary. The fact that the City had no claim against the Water District was immaterial. The claim of the Water District against the City constituted an account subsisting between the two entities the settlement of which the Auditor was empowered to authorize and enforce.

"An 'account' is a general term which covers any item of indebtedness, by contract, express or implied. 1 Cyc. 362; 1 Am. & Eng. Ency. Law, 434, and notes; 1 Words & Phrases, 87; Cave, Use of Wallace v. Burns, 6 Ala. 780; Morrisette, Extr. v. Wood, 128 Ala. 505, 507, 508, 30 South. 630."
Dees v. Self Bros. 51 So. 735, 736.

"While the primary idea of account—computatio—implies matters of debit and credit, the adjustment of which will show a balance to be accounted for by the one party or the other, 'it is not necessarily restricted to several distinct items nor is it the less an account that all the items of charge are by one person against another, instead of being a statement of mutual demands of debit and credit, provided the charges arise out of contract, express or implied, or some duty imposed by law.' 1 Enc. of L. and P. 362; Nelson v. Posey County, 105 Ind. 287, 4 N. E. 703."
McMullen Lumber Co. v. Strother, 136 Fed. 295, 302.

But even if items both of debit and credit were necessary to constitute an account the claim of the Water District in

this case would be an account since the City has paid part of the claim. (R. 28, 29.)

III.

The Method Used by the Auditor in Enforcing the Settlement in This Case Was Legal and Proper, and Well Within His Authority.

Section 491, Administrative Code, 1917, provides that of the internal revenue accruing to the Insular Treasury and not specifically applied elsewhere, "there shall be set apart ten per centum as a provincial allotment, * * * and twenty per centum as a municipal allotment." The section further pertinently provides that:

> "The City of Manila shall receive the shares which it would receive if it were both a municipality and a regularly organized province, and for the purposes hereof shall be deemed to be both the one and the other."

Act No. 3065 after imposing a sales tax provides that:

> "Ten per cent of the tax collected under this Act shall be distributed among the provinces and municipalities in accordance with the provisions of section four hundred and ninety-six of the Administrative Code, five per centum accruing to the provinces and the other five to the municipalities."

These were the funds with which the Auditor enforced this settlement and the requirement of Section 3 of the Organic Act, "That no money shall be paid out of the treasury except in pursuance of an appropriation by law," is thus met and satisfied.

Section 497, Administrative Code, provides that "The payment of the internal revenue allotments shall be made from the Insular Treasury quarterly, upon warrants drawn by the Collector of Internal Revenue," and Section 621 of said Code provides that:

> "No Insular warrant shall be paid by the Treasurer until countersigned by the Auditor or by an officer of the Bureau of Audits thereunto authorized in writing by him."

The Auditor refused to countersign a warrant transferring to the credit of the City of Manila its allotment of internal revenue taxes until it had settled the claim of the Metropolitan Water District against it for water service furnished the city and upon its continued refusal expressed his intention of countersigning a warrant transferring sufficient of such allotment to the Metropolitan Water District to liquidate the claim. The Auditor is not only authorized by the Accounting Law to enforce the settlement of accounts between the City and the Water District but by the Organic Act he has all of the jurisdiction and powers of the former auditors and Comptroller of the Treasury.

The auditors and comptrollers of the United States Treasury have long exercised the jurisdiction of transfer of funds from one appropriation to another within one department or independent establishment of the Government or between different departments or between different independent establishments of the Government. The attention of the Court is respectfully invited to 1 Lawrence, Comptroller of the Treasury, pages 419 to 431, for description and definition of the various kinds of warrants used in Treasury bookkeeping. See also 13 Comptroller's Decisions, 893, 901. Warrants are of four classes: appropriation warrants, repay and covering warrants, pay warrants, and surplus fund warrants. The warrant required in this case to debit the appropriation or allotment of internal revenue taxes in the Insular Treasury and to credit same either to the City of Manila or to the Water District is an appropriation warrant. Its purpose is to set apart from the general fund of internal revenue taxes the authorized allotment and to credit it on the proper ledger of the Insular Treasury to the proper account. It has long been the practice of the Auditors of the Treasury of the United

States to settle the claims of one department of the Government against the others and to state a settlement authorizing the drawing of an appropriation warrant against the appropriations of the department securing the services or supplies and crediting same to the applicable appropriations of the department furnishing same. See 9 Comptroller's Decisions, 625, *id.* 766; 17 *id.* 174; 1 Comptroller General's Decisions, 290; 2 *id.* 151, *id.* 325. The matter has long been covered by regulations. See Treasury Department Circulars No. 48, dated June 11, 1906, No. 54, dated August 14, 1907, No. 11, dated February 3, 1908, and No. 56, dated July 14, 1908. The Court will take judicial notice of these regulations. *Caha v. United States*, 152 U. S. 211.

This procedure was recognized and amplified by the Act of August 29, 1916 (39 Stat. 622), as to the Signal Corps of the Army and by Section 7 of the Act of May 21, 1920 (41 Stat. 607, 613), as to the remaining departments, etc., of the United States Government. Said section provides:

> "That whenever any Government bureau or department procures, by purchase or manufacture, stores or materials of any kind, or performs any service for another bureau or department, the funds of the bureau or department for which the stores or materials are to be procured or the service performed may be placed subject to the requisitions of the bureau or department making the procurement or performing the service for direct expenditure: *Provided*, That funds so placed with the procuring bureau shall remain available for a period of two years for the purposes for which the allocation was made unless sooner expended."

The amplification permits an appropriation warrant to be drawn and countersigned pursuant to section 11 of the Act of July 31, 1894 (28 Stat. 209), as amended by the Budget and Accounting Act of 1921 (42 Stat. 23, 27), by the Comptroller General debiting the available appropriations of the department furnishing the supplies and in advance of actual delivery, that is it permits doing prior to the delivery

of supplies or services what could always be done subsequent to such delivery.

Here the Water District had rendered the service to the City of Manila and the Auditor clearly had jurisdiction to audit and settle its claim against the City of Manila and to debit the appropriations of the City and credit same to the funds of the Water District in settlement of the account. The Auditor having such jurisdiction, the further question whether his decision on the account is correct is not before the Court in these proceedings. *Work v. United States Ex Rel Rives* (267 U. S. 175); *Riverside Oil Company v. Hitchcock* (190 U. S. 316). In the latter case the court said:

> "Whether he decided right or wrong is not the question. Having jurisdiction to decide at all, he had necessarily jurisdiction, and it was his duty to decide as he thought the law (and the facts) was, and the courts have no power whatever to review his determination by mandamus or injunction."

However, the Court below did not intimate that the decision was wrong.

IV.

No Act on the Part of the City of Manila Was Necessary to Satisfy the Provision of the Organic Act "That no Money Shall be Paid Out of the Treasury Except in Pursuance of an Appropriation by Law."

> "The origin of legislative appropriations is so well known that it seems almost a work of supererogation to here allude to it."
>
> State v. Moore, 69 N. W. 373.

> "An appropriation is *per se* nothing more than the legislative authorization prescribed by the Constitution that money may be paid out at the Treasury."
>
> Campagna v. United States, 26 Ct. Cls. 317.

The provision of Section 3 of the Organic Act, "that no money shall be paid out of the treasury except in pursuance of an appropriation by law", obviously refers to the general fund of Government money in the Treasury of the Philippine Islands over which the legislature has control and which can be appropriated only by the legislature. Any act of any board or body of the City purporting to authorize the payment of money out of the Insular Treasury, within the meaning of the above section, would be entirely futile. The Congress had in mind only the legislature, and the latter body is the only body empowered to enact an appropriation law authorizing the expenditure of money from the Insular Treasury as contemplated by the above section. This the legislature has done (See III above).

No other or further act of appropriation was needed to authorize the issue of an appropriation warrant to transfer the City's apportionment to the City's credit, or by the same means to apply the City's apportionment of such appropriated funds, or a part thereof, to the payment of an account subsisting between the City and the Water District, the enforcement of the settlement of which was committed by the Legislature to the Auditor in express terms and in accordance with the practice existing in the United States which was confirmed by Section 7 of the Act of May 21, 1920, *supra*.

V.

The Action of the Auditor in This Case Will Not Deprive the City of Manila of Its Property Without Due Process of Law.

The Court below in the majority opinion quote the true rule, but fail to give any effect to it, viz:

> " 'Due process of law,' in its constitutional meaning, includes administrative process of the customary sort, as well as judicial process. 3 Words and Phrases 2230." (R. 70.)

Even where a municipal corporation is not so closely connected with and is not part and parcel of the central government as is the City of Manila with relation to the government of the Philippine Islands, the power of the State over its affairs practically are plenary.

> "It is established by an overwhelming weight of authority, and, I believe, is conceded on all sides, that the Legislature has the constitutional power to direct and control the affairs and property of a municipal corporation for municipal purposes, provided it does not impair the obligation of a contract, and by appropriate legislation may so control its affairs as ultimately to compel it, out of the funds in its treasury, or by taxation to be imposed for that purpose, to pay a demand when properly established, which in good conscience it ought to pay, even though there be no legal liability to pay it." Linton v. Ashbury, 41 Cal. 525, 530.

And what the Legislature may do directly it may do through channels selected by it for that purpose.

> "A municipal corporation * * * is a representative not only of the State, but is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the State. The State may withdraw these local powers of government at pleasure, and may, through its legislature or appointed channels, govern the local territory as it governs the State at large."
> United States v. Railroad Company, 84 U. S. 322, 329.

In *Pawhuska v. Pawhuska Oil Company* (250 U. S. 394), the Supreme Court of the United States refers with approval to *New Orleans v. New Orleans Water Works* (142 U. S. 79) in the following words:

> "Some of the earlier cases were reviewed and it was said, p. 91, 'But further citations of authorities upon this point are unnecessary; they are full and conclusive to the point that the municipality, being a mere

agent of the State, stands in its governmental or public character in no contract relation with its sovereign, at whose pleasure its charter may be amended, changed or revoked, without the impairment of any constitutional obligation, while with respect to its private or proprietary rights and interests it may be entitled to the constitutional protection. In this case the city has no more right to claim an immunity for its contract with the Water Works Company, than it would have had if such contract had been made directly with the State. The State, having authorized such contract, might revoke or modify it at its pleasure.' "

And again in *Stewart v. Kansas City* (239 U. S. 14, 16), the Supreme Court of the United States used the following pertinent language:

"It was said in Railroad Company v. County of Otoe, 16 Wall. 667, 676, that 'counties, cities, and towns exist only for the convenient administration of the government. Such organizations are instruments of the State, created to carry out its will.' This power of creation and control may be exercised in many ways and may give rise to actual or asserted inequalities. * * * It would be difficult to define restrictions upon this power of control and keep it efficient."

Kies v. Lowry, 199 U. S. 233.
Laramie County v. Albany County, *et al.*, 92 U. S. 307.
Worcester v. Worcester Street Railway Co., 196 U. S. 539.
Hunter v. Pittsburgh, 207 U. S. 161.

But even were the "due process of law" clause of the Organic Act applicable to the situation in this case there has been a full compliance with it.

"Due process of law is process due according to the law of the land."
Walker v. Sauvinet, 92 U. S. 90, 93.

See also:

Ballard v. Hunter, 204 U. S. 241.

The Auditor is the agency selected by the Legislature to enforce settlements of accounts subsisting between the City and the Water District. An account was so subsisting. The Water District requested the Auditor to enforce its settlement (R. 26). The Auditor "after due study" of the claim, "taking into consideration the conflicting contentions of both parties, reached the conclusion that said claim was just, legal and proper." (R. 26.) The Auditor then made demand on the City for payment and settlement of the claim, the City refused to comply (R. 27), and through the City Fiscal further presented its case (R. 18). That the City Fiscal chose to address himself to the Collector, instead of the Auditor, was his own concern. The fact remains the City's opportunity for hearing before the Auditor was ample, and a hearing was never denied the City. As said by Justice Bradley in *Davidson v. New Orleans* (96 U. S. 107), and quoted with approval in *Ballard v. Hunter, supra,* with regard to the process", "if found to be suitable or admissible in the special case, it will be adjudged to be 'due process of law.' "

VI.

There Was No Justiciable Controversy Before the Court.

The Government of the Philippine Islands has a centralized administration analagous to that of the United States, as contradistinguished from a decentralized administration such as exists in the various state governments of the United States. In the latter there is no administrative relation between the Governor and the heads of the departments, or between the heads of the different executive departments; each is separately elected by the people and owes his position to them. There is, however, a legal relation existing between these officials. Each has certain

rights, certain duties, and certain powers, and it may be that the exercise of some power by the Governor, for instance, may, when the act is done, set in motion the requirement of the performance of some duty by the head of a department, and this involves a legal relation with which the courts will deal.

See:
State v. Wrotnowski, 17 La. Ann. 156.
State v. Crawford, 28 Fla. 441.

In such a case only the courts can compel the performance of the required duty, for the independence of different departments of the administration one from the other prevents, in fact denies, any control by any one department of the administration over any other such department.

However, in a government with a centralized administration, such as that of the United States and of the Philippine Islands where the subordinates are appointed by a chief executive, the situation is quite different. It is not possible for the head of any department to stand out against the chief executive, and argue for his independence. Right or wrong, the head of a department must obey if it comes to a square issue. The relation existing between the two is not a legal relation with which alone the courts are concerned, but an administrative and political relation the enforcement of which lies exclusively within the powers of the chief executive. Few, if any, court decisions have considered the latter question, for the very good reason, as stated above, that the matter is not one for the courts. However, former Chief Justice Taney when Attorney General ably discussed the matter and advised President Jackson that should an officer of the executive branch of the Government refuse to obey the President's orders, the latter could remove the disobedient officer and substitute one who would carry out such orders. (2 Ops. Atty. Gen. 482.) The same question arose in the dispute between President Jackson and Secretary of the Treasury Duane, resulting in the dis-

missal of Mr. Duane and the appointment of Mr. Taney as his successor, who carried out the President's order with reference to government deposits. Similar questions arose between President Johnson and Secretary Staunton, and between President Wilson and Secretary Lansing. The legal relation which exists in decentralized administrations, however, is absent in a centralized administration, and the courts are not concerned with the administrative relation, for, otherwise, we would have the situation of the President suing the heads of the different executive departments when disputes arose, or one such department suing another, for example, the War Department suing the Navy Department. The statement of the proposition is its own refutation.

When it comes to money matters the Congress in the United States, and both the Congress and the Legislature so far as the Philippine Islands are concerned, take a hand by designating an official who shall have general control over such matters, the Comptroller General in the United States and the Auditor in the Philippine Islands. Chief Justice Taft says on page 81 of his book entitled *Our Chief Magistrate and His Powers:*

> "The Comptroller of the Treasury is an appointee of the President, and in a general sense is his subordinate. If the President does not like him as a Comptroller, he can remove him and with the consent of the Senate put in another one, but under the act of Congress creating the office, the President can not control or revise the decisions of this officer. His work is like the work I have referred to, quasi-judicial."

It is quite apparent that the relation existing between the President and the Comptroller General, at least prior to the Budget and Accounting of 1921 (42 Stat. 23, 27), and between the President and the Auditor, and also between the Comptroller General and the various executive departments, and between the Auditor and the various executive

departments in the Philippine Islands, is an administrative relation, one with which, as stated above, the courts are not concerned.

The Comptroller General settles money differences existing between branches of the executive departments, and enforces such settlements by adjustments in the applicable appropriations. That a department aggrieved at such a settlement and adjustment by the Comptroller General could apply to the courts to reverse or set aside his action is obviously so contrary to our scheme of government, and particularly to our accounting system, that no discussion would appear necessary to show that no such right exists. The fact that for more than a century the enforcement of any such right never has been attempted is sufficient proof of its non-existence.

The Legislature of the Philippine Islands, apparently comprehending this administrative relation and lack of legal relation between the executive branches of the Government, has made special provision for the settlement of disputes pertaining to appropriation or other money matters which arise between such branches. Specifically the Legislature has provided that for such purposes the City and the Water District shall be regarded as provinces (Section 593, Administrative Code, 1917, as amended by Act No. 3066, *supra*); and as specifically has provided that the Auditor shall authorize and enforce the settlement of accounts subsisting between provinces (Section 588, Administrative Code, 1917, as amended by Act No. 3066). These provisions coupled with the provision of the Organic Act that "the decisions of the Auditor shall be final and conclusive upon the executive branches of the Government," except for the appeal to the Governor General and Secretary of War (Section 24), forecloses any contention that these branches may present their money matter disputes to the courts for determination, even if that contention does not run counter, as we believe, to a fundamental proposition of the law of administration.

Furthermore, in the final analysis, it would be difficult to find a clearer case for the Auditor's action than the one before us. It is not disputed that the Water District furnished the water service to the City, nor is there dispute as to the reasonableness or uniformity of the charges therefor, indeed, there could not be. (R. 25.) This being true the obligation of the Water District to "charge and collect," and of the City to pay for such water service has been preadjudicated by the Legislature in Section 9 of Act No. 2832, which provides in pertinent part that:

> "The Metropolitan Water District * * * shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution."

In such a situation, and considering the plenary control of the Legislature over municipal corporations, wherein can there be a justiciable controversy? Indeed, it is difficult to see wherein any controversy could be other than entirely one-sided. This was a case clearly demanding action by the Auditor, and the nature and manner of his action were as clearly indicated. He could not have refused to act, nor could he have done other than he did, without either failing to perform his duty or failing to perform such duty in the manner plainly indicated by the Legislature.

The court below by its decision and judgment denies the Legislature its plenary power of control over municipal corporations, denies the power of the Legislature to control the settlement of money disputes subsisting between the governmental branches, disregards the means provided by the Legislature for the settlement of such disputes, overturns a practice followed for more than a century in this country, disrupts the accounting system established for the Philippine Islands, and throws confusion into a centralized administration by attempting to apply the law of decentralized legal relations. Only by the assumption of

jurisdiction over a non-justiciable controversy could this have been accomplished, and we submit that in so doing the court committed grievous error.

VII.

The Jurisdiction Assumed by the Court Below in This Case Will Disrupt the Accounting System of the Philippine Islands.

As said by Justice Ostrand in his dissenting opinion:

> "If this court can by mandamus deprive the Chief executive of any of his constitutional prerogatives, the courts of first instance can do likewise. That this will not make for efficiency in administration, but will cause confusion and in cases such as the present tend to disrupt the Government accounting system can hardly be doubted. Congress in the exercise of its plenary powers over territorial governments has deemed the appeal to the Governor General an adequate mode of testing the validity of the decisions of the Insular Auditor and has made the remedy exclusive and its views should be respected by this court. (R. 84.)
>
> * * * * * * * * *
>
> The court in assuming jurisdiction over the case has in effect undertaken to deprive the Chief Executive of jurisdiction expressly conferred upon him by constitutional statutes and has to that extent committed an encroachment upon the domain of a coordinate department of the Government and has arrogated to it powers not conferred on it by law." (R. 87.)

VIII.

To Grant a Writ of Mandamus Where the Law Provides a Plain, Speedy and Adequate Remedy is Contrary to the Decisions of This Court.

We submit that in determining the conflicting contentions of the City of Manila and the Water District and in enforcing a settlement between them, the Auditor was per-

forming semi-judicial duties involving judgment and discretion and that his acts and the acts of the Collector of Internal Revenue under his direction are not subject to review on a petition for writ of mandamus, *Work v. United States ex rel Rives* (267 U. S. 175), and that in any event the law afforded a plain, adequate, and speedy remedy preventing the granting of mandamus.

The Organic Act provides that:

> "Any person aggrieved by the action or decision of the auditor in the settlement of his account or claim may, within one year, take an appeal in writing to the Governor General, which appeal shall specifically set forth the particular action of the auditor to which exception is taken, with the reason and authority relied on for reversing such decision.
>
> If the Governor General shall confirm the action of the auditor, he shall so indorse the appeal and transmit it to the auditor, and the action shall thereupon be final and conclusive. Should the Governor General fail to sustain the action of the auditor he shall forthwith transmit his ground of disapproval to the Secretary of War, together with the appeal and the papers necessary to a proper understanding of the matter. The decision of the Secretary of War in such case shall be final and conclusive." (Section 25.))

This remedy is plain, speedy and adequate and where such a remedy exists there can be no resort to extraordinary judicial proceedings, *Bayard v. United States, ex rel White* (127 U. S. 246); *Poindexter v. Greenhow* (114 U. S. 270); *Bailey v. George* (259 U. S. 16); and particularly is this true where the law provides administrative appeals and such have not been taken, as here. *Ekiu v. United States* (142 U. S. 651); *United States v. Sing Tuck* (194 U. S. 161); *Baltimore & Ohio Railroad v. Pitcairn Coal Co.* (215 U. S. 481). If we substitute the Governor General and the Secretary of War as provided in Section 25 of the Organic Act, for the Interstate Commerce Commission, the following language of Chief Justice White in the *Pitcairn case* is controlling:

"We see no escape from the conclusion that the grievances complained of were primarily within the administrative competency of the Interstate Commerce Commission and not subject to be judicially enforced, at least until that body clothed by the statute with authority on the subject, had been afforded by a complaint made to it the opportunity to exert its administrative functions."

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari in this case should be granted.

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May 4, 1926.

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CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 363

JUAN POSADAS, JR., AS COLLECTOR OF INTERNAL REVENUE, BEN F. WRIGHT, AS INSULAR AUDITOR, VICENTE CARMONA, AS INSULAR TREASURER, AND THE METROPOLITAN WATER DISTRICT, *Petitioners*,

vs.

THE CITY OF MANILA, *Respondent*.

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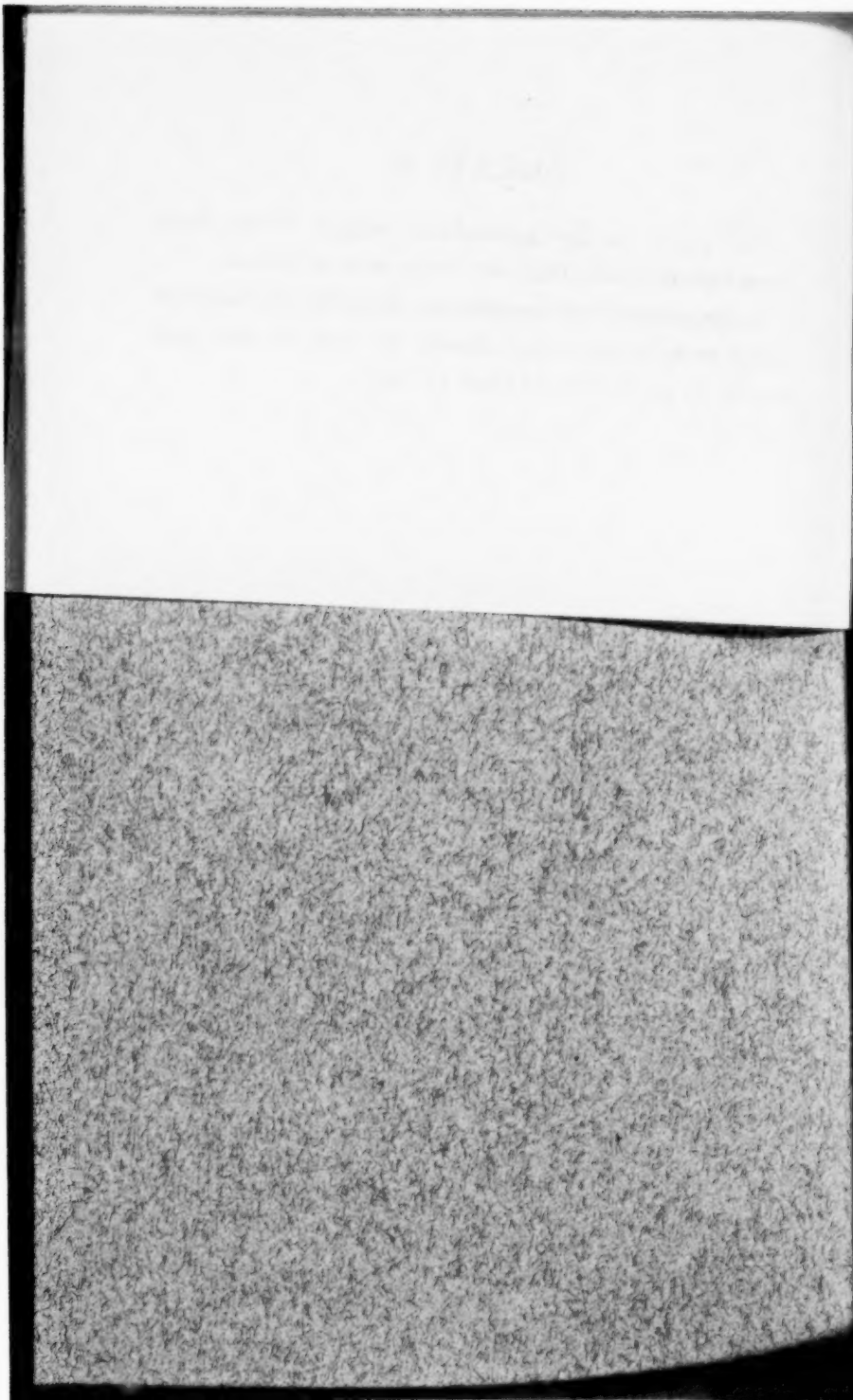
ERRATUM

The pages in the appendices (pages 17–40) have been renumbered since the Index was prepared.

References to the appendices, either in the Index or in the body of the Brief, should be read as one page larger (e. g., 16 should read 17, etc.).



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In the Supreme Court of the United States.

OCTOBER TERM, 1926

No. 363

JUAN POSADAS, JR., AS COLLECTOR OF INTERNAL REVENUE, BEN F. WRIGHT, AS INSULAR AUDITOR, VICENTE CARMONA, AS INSULAR TREASURER, AND THE METROPOLITAN WATER DISTRICT, *Petitioners*,

vs.

THE CITY OF MANILA, *Respondent*.

STATEMENT OF THE CASE

The case, with the grounds on which the jurisdiction of this Court is invoked, and the questions presented, are stated in our original petition for the writ of certiorari herein (pp. 2-14). The writ was granted June 1, 1926 (271 U. S. 658).

The Governor General having decided (R. 36, 42)

> "That the City of Manila shall pay for all services rendered by the Metropolitan Water District",

basing his decision on Section 9 of Philippine Act No. 2832, as well as "upon justice and equity",—and the Insular Auditor having arrived at the same decision upon presentation of the question to him on the initiative of the Water District,—the proper executive officers of the Insular Government, viz., the Insular Collector, Auditor, and Treas-

urer, defendants below, petitioners here, proceeded to take the proper steps to enforce that decision and thus to enforce settlement of the account between the two governmental bodies involved. Thereupon the City began these mandamus proceedings in the Insular Supreme Court, invoking the original jurisdiction of that court.

Applicable statutes are printed in the Appendix to this brief (*infra*, pp. 16-39).

BRIEF FOR PETITIONERS

May it please the Court:

The petitioners rely upon their "**Brief in Support of the Petition**" appended (pp. 15-35) to their original petition for the writ of certiorari in this case.

Supplementing that brief, the petitioners desire to add only:

I.

This suit for mandamus in the Supreme Court of the Philippine Islands, while in form against these petitioners, respectively the Insular Collector of Internal Revenue, Insular Auditor, Insular Treasurer, and the Metropolitan Water District, **was and is in substance and in fact a suit against the Insular Government,** by the City of Manila.

Therefore, in this brief, the phrases "the Government", "the Insular Government", and "these petitioners" will be used interchangeably. These petitioners have no personal interest in this suit, but are merely the representatives of the Insular Government.

A.—The Metropolitan Water District, one of these petitioners, although denominated a "public corporation", is, actually, but an executive branch of the Government of the Philippine Islands (see pp. 17-18 of our original brief in support of petition for writ of certiorari).

II.

The "City of Manila" is really but another branch of the Insular Government.

The City of Manila, while called a "municipal corporation", is not a true municipal corporation in the ordinary sense; but is rather an agency or branch of the Insular Government, wholly subject to the plenary power of that Government (see pp. 16-17 of our original brief in support of petition for certiorari).

Confer, also

Vilas vs. Manila, 220 U. S. 345, 356, 362 (LURTON, J.).

IT IS A HYBRID ORGANIZATION bearing many analogies to the government of the District of Columbia (Chap. 60, Secs. 2427-2539, Philippine Administrative Code, "The City of Manila"; see pertinent sections printed in Appendix, *infra*, pp. 21-26, where we have picked out **in bold face type** some of the provisions indicating the complete control of the city by the Insular Government).

It will be noted that:

1. Thirty per cent of the city's expenses are defrayed by the Insular Government (Code, Sec. 2442; Appendix, *infra*, p. 23).

2. The mayor and the other chief officials of the city are appointed by the Governor-General and are removable by him; and removals of even minor city officials are subject to the approval of the Secretary of the Interior (Secs. 2434, 2447; Appendix, *infra*, pp. 22, 25).

3. The Governor-General fills vacancies in the Municipal Board; and may even make temporary appointments to maintain a quorum during the sickness or absence of any member (Secs. 2439, 2440; Appendix, *infra*, pp. 22-23).

4. The mayor's power of veto of ordinances is subject to supervision by the Governor General, whose decision "shall be final" (Sec. 2443; Appendix, *infra*, p. 24).

5. The mayor exercises all of his powers, "*subject to the authority and supervision of the Secretary of the Interior*" (Sec. 2434; Appendix, *infra*, p. 22); and other city powers are likewise exercised subject to the approval of the Secretary of the Interior (Sec. 2434, last paragraph, and Secs. 2436 and 2443; Appendix, *infra*, pp. 22, 23-24).

6. The Insular Auditor receives and audits the city accounts (Sec. 2450; Appendix, *infra*, p. 25); all city moneys are deposited daily in the Insular Treasury or in a Government depository; and the city treasurer must render such accounts as may be prescribed by the Insular Auditor, and perform the duties prescribed for "provincial treasurers generally" (Sec. 2480, Appendix; *infra*, p. 26); and the city's moneys are to be kept and expended by the Insular Treasurer (Sec. 2451; Appendix; *infra*, p. 25), and not by any city official.

7. The Insular Director of Education exercises the same jurisdiction in the city as elsewhere in the Islands; the Insular Director of Health has control of health and sanitary matters and inspection in the city; the Insular Health Service acts as the local board of health; and the Insular Director of Prisons receives for confinement and detention persons sentenced to imprisonment by the Municipal Court (Secs. 2454, 2456 and 2457; Appendix, *infra,* pp. 25-26).

8. The City Attorney (*"fiscal"*) and his assistants discharge their duties under the general supervision of the Insular Attorney General (Sec. 2465; Appendix, *infra,* p. 26).

That organization is not a true city government. *It is merely the agency through which the Insular Government governs that local territory.* It is, equally with the Water District—and with the provincial governments—only a branch of the central government of the Islands. Therefore, it is quite in keeping with its true character that the Legislature further provided (Code, Sec. 593; Appendix, *infra,* pp. 20-21) that for accounting purposes it shall be regarded as a province, and that the Insular Auditor (Sec. 588; Appendix, *infra,* p. 20) shall have power to authorize and enforce settlements of accounts between it and any bureau or office of the central government, or any province (such as this Water District, likewise regarded, under Section 593, as a province for such purposes).

A.—Prior to the institution of these proceedings, the Governor General had decided, upon two appeals regularly taken to him, that, as between these two administrative branches of the Insular Government, it was the legal duty of the Water District to charge and collect from the City for "all services rendered", including water furnished for extinguishing fires and for public hydrants (R. 36, 42; see, also, for the whole correspondence on the two appeals, R. 30-42). While those decisions were, in form, simply upon appeals by minority members from contrary decisions of the majority members of the District Board of the Water District; yet inasmuch as such majority of the District

Board was composed of officials of the City of Manila sitting *ex officio* in the District Board (viz, the mayor, the city engineer, and the city treasurer; R. 33, 41; and see also Sec. 3, **Act No. 2832, as amended by Act No. 3109, Appendix,** *infra,* pp. 30-31, fixing the membership of the District Board), and inasmuch also as the City's contention was fully presented to the Governor General in the correspondence on those appeals (R. 30-42, *supra*), *the Governor General did in fact decide all the questions on the merits here involved between these two administrative bodies or branches of the Insular Government.*

B.—These petitioners were therefore, in their public acts here assailed, simply carrying out the decision of the Governor General; that is to say, of the Government of the Philippine Islands; and this suit, as above stated (Point I, p. 3, *supra*), is in substance and in fact a suit by the City against the Government of which it is a part.

III.

The position of these petitioners and of the Government (except that, as hereinafter pointed out in Points VII and X—B—(3), pp. 10-12, 13-14 hereof, the Insular Auditor had ample power, in conjunction with the Collector and the Treasurer, to **enforce the settlement** in the manner adopted by him) **is ably stated in the dissenting opinion of Mr. Justice Ostrand in the Insular Supreme Court in this case** (R. 78-87) to which, without here reprinting it, the attention of this court is especially invited.

IV.

It is believed to be indisputable that **the Philippine Legislature** under the broad general legislative powers granted it by the Organic Act (Secs. 6, 7, 8, and 12; 39 Stat. 547, 548-9; Appendix, *infra*, pp. 16-17) **had and has ample power to determine as between these two governmental bodies, the City and the Water District, whether or not, as a matter of legislative policy or discretion, the City should**

be required to pay the Water District for water furnished for public purposes such as fire protection and public hydrants.

The Legislature has so decided. It has, by Section 8 of Act No. 2832, transferred the water system from the City of Manila to the control and management of the Water District and has directed that the District receive and assume all assets and liabilities including bonds issued by the City against the water system (Sec. 8, Act No. 2832, Appendix, *infra,* p. 32; and see also paragraph XIX of the City's petition for mandamus, R. 9), and has further, by Section 9 of that same Act (Appendix, *infra,* pp. 32-33), directed that

> "The Metropolitan Water District * * * *shall charge and collect a uniform rate for all services rendered,* whether to any person, corporation, firm, governmental body, *municipal entity,* religious or charitable institution." (*Italics ours.*)

There can be no escape from this language. The City of Manila is a "municipal entity" included within the Metropolitan Water District by Section One of that same Act No. 2832 (Appendix, *infra,* p. 28; and see also paragraph XVIII of the City's petition for mandamus, R. 9). *No exception is made by the Legislature in favor of the City.* Therefore, the courts can make none.

> "The Legislature having made no exception, the courts of justice can make none, as this would be legislating."
>
> *Bank vs. Dalton,* 9 How. (50 U. S.) 522, 528-9 (CATRON, J.).

A.—THIS STATUTE IS NOT VIOLATIVE OF THE TERMS OF THE CARRIEDO TRUSTS UNDER WHICH THE CITY RECEIVED FROM THE AYUNTAMIENTO DE MANILA THE PORTION OF THE WATER SYSTEM IN WHICH THE CARRIEDO FUNDS HAD BEEN INVESTED.

On the face of the allegations of the City's petition for mandamus (paragraphs XII, XIV, XVI, XVII; R. 7-8) the obligation thereunder is simply to provide and maintain an adequate water system or water supply for the inhabitants of the City of Manila.

That purpose is amply provided for by the creation of the Water District. The Insular Government cannot be bound to continue forever the precise form of municipal government in effect when the Carriedo funds were received.

> "The State's plenary power over its municipal corporations to change their organization, to modify their method of internal government, or to abolish them altogether, is not restricted by contracts entered into by the municipality with its creditors or with private parties.
>
> *Vilas v. Manila, supra,* 220 U. S. 345, 362 (LURTON, J.), quoting,
> *Shapleigh v. San Angelo,* 167 U. S. 646, 654.

B.—NO PRIVATE RIGHTS ARE HERE INVOLVED.—No individual water consumer or inhabitant of Manila is complaining that the water supply has been decreased, or that the Carriedo funds are not being used in accordance with the trust upon which they were originally received.

V.

The Philippine Legislature having so enacted, it follows that THE DECISION OF THE GOVERNOR-GENERAL (R. 36, 42, *supra*) that

> "the City of Manila shall pay for all services rendered by the Metropolitan Water District. This decision is based not only upon justice and equity but upon Section 9 of Act No. 2832, which states that the Metropolitan Water District shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution",

WAS INDUBITABLY CORRECT.

And the Auditor arrived at the same conclusion when the Water District account with the city was presented to him for settlement.

On the merits, therefore, the City owes the money in question, for this water, to the Water District.

Therefore, this suit resolves itself into a mere question of procedure, as to whether or not the responsible executive officers of the Insular Government adopted the correct procedure in arriving at an indubitably correct decision.

A.—*That the correctness of the decision itself cannot be seriously questioned* is further evidenced by the fact that neither the City nor the court below attempts to do so. Opposing counsel in their brief in this court in opposition to the petition for certiorari make no attempt to show that the City ought not to pay this money. On the contrary they evade this question of the merits, saying (City of Manila's Brief, p. 2):

> "It is unnecessary, therefore, to go into the merits of the dispute or the history of the water system of the City of Manila."

VI.

But this question of the merits lies at the basis of this whole suit and is of primary importance here.

If the decision of the auditor and of the other executive officers of the Insular Government, petitioners here (following the decision of the Governor General, R. 36, 42, *supra,* as above stated), *was correct on the merits, then* even if the courts may (whether by mandamus, certiorari, or otherwise) inquire into the basis of the quasi-judicial action of these executive officers, *that action will not be disturbed.* The courts will not do a vain or useless thing. They will not disturb correct decisions by executive officers, as between executive departments or branches of the same government, merely in order that another form of executive procedure may be followed for the purpose of arriving at the same result. The writ of mandamus is not a writ of right; but, on the contrary, is a high prerogative writ, issuing only in the sound judicial discretion of the court.

It is an equitable remedy, largely controlled by equitable principles.

The public welfare will be consulted in determining whether or not the writ should issue; and it should be re-

fused where its issue would injuriously affect the public interest.

> "Mandamus is an extraordinary legal process which is awarded, not as a matter of right, but in the exercise of a sound judicial discretion. It issues to remedy a wrong, not to promote one; to compel the performance of a duty which ought to be performed, *not to direct an act which will work a public or private mischief,* or will be within the strict letter of the law, but in disregard of its spirit. Although classed as a legal remedy, its issuance is largely controlled by equitable principles."
>
> Duncan Townsite Co. v. Lane, 245 U. S., 308, 311-12 (BRANDEIS, J.).

Therefore, the quotation made on page 33 of our original brief herein (Brief in Support of Petition for Mandamus, p. 33) from the dissenting opinion of Mr. Justice Ostrand in the Insular Supreme Court (R. 84, 87) is peculiarly applicable here, particularly that sentence of Mr. Justice Ostrand's opinion (R. 84) wherein he says:

> "If this court can by mandamus deprive the Chief Executive of any of his constitutional prerogatives, the courts of first instance can do likewise. *That this will not make for efficiency in administration, but will cause confusion and in cases such as the present tend to disrupt the government accounting system can hardly be doubted."*

VII.

The procedure here followed by the Insular auditor and the other Insular executive officers was correct, and well within their authority (See Point III, pp. 21-24, of our original brief herein).

A.—Section 24 of the Organic Act (Appendix, *infra,* pp. 18-19) imposes upon the auditor the duty to "examine, audit and *settle*" all accounts pertaining to the revenues and receipts from whatever source of the Philippine Government *and of the provincial and municipal governments* of the Philippines, and provides that

> "the administrative jurisdiction of the auditor over accounts whether of funds or property * * * shall be *exclusive*"; and that his decision shall be "final and

conclusive upon the executive branches of the government", except for the appeal to the Governor General and the Secretary of War under Section 25 of the Organic Act.

And Section 588 of the Philippine Administrative Code of 1917, as amended by Act No. 3066 in 1923 (Appendix, *infra*, p. 20), provides further that the auditor shall have power

> "to authorize and *enforce the settlement* of accounts subsisting between the different bureaus or offices of the Insular service; between any such bureau or office and any provincial, municipal or city government; between provincial governments; between municipal or city governments; *and between any such provincial and municipal or city governments*";

and Section 593 of the same Administrative Code provides that

> "the chartered cities and the Metropolitan Water District"

shall be regarded as provinces.

Accordingly, it was the express statutory duty of the auditor, both under the Organic Act and under the statutes of the Philippine Islands (enacted by the same legislative authority which created both the City and the Water District, and controls them), to *"authorize and enforce the settlement of accounts"* subsisting between them.

The auditor, therefore, in making this settlement, performed an executive duty expressly enjoined upon him by law, necessarily involving the exercise of quasi-judicial judgment and discretion.

B.—The dispute which had thus arisen between the City and the Water District as to the amount of money due from the one to the other for water furnished or supplies rendered, necessarily related to an "account" between them. The fact that their dispute, as to how the account ought to be settled, related rather to an underlying question of the City's liability for payment of a portion of the water furnished, than to any particular items of the account, did not change the fact that it was a current account between the parties, to be "settled." (See Point II, pp. 19-20, of

our original "Brief in Support of the Petition" for certiorari herein, and the authorities there cited.)

VIII.

Since the duty to "settle" the accounts, thus imposed by law upon the Insular auditor as an executive officer of the Philippine Government, necessarily involved the exercise of quasi-judicial judgment and discretion, his discretion cannot be controlled by the courts by mandamus or other extraordinary remedy.

IX.

Even if it could be said (which is not conceded) **that** where, as here, it appears that the auditor's decision involves solely a determination of a question of law, and is not based upon the determination of questions of fact (since no particular items of the account are disputed), in such case **the writ of mandamus could be made to perform the office of a writ of certiorari to review the auditor's decision, upon allegations that it was made upon a wrong legal basis, and was in fact an abuse of his discretion; yet where it appears, as it does here, that his decision was in fact based upon a correct interpretation of the law** (Point V. *supra*) **the writ should be dismissed.**

A.—There is not even any direct allegation in the City's petition for mandamus here, that the Auditor's decision was, in fact, wrong; or that it was founded upon any wrong basis.

X.

The statutory power to "enforce the settlement" necessarily implies a grant of power to the auditor of all the incidental powers reasonably necessary for that purpose.

A.—It is fundamental that a grant of power in a constitution or statute necessarily implies and carries with it a grant of all incidental powers reasonably necessary to carry it into effect.

"Whenever a power is given by statute, everything necessary to make it effectual or requisite to attain the end is implied. It is a well established principle that statutes containing grants of power are to be construed so as to include the authority to do all things necessary to accomplish the object of the grant. The grant of an express power carries with it by necessary implication every other power necessary and proper to the execution of the power expressly granted."

2 *Lewis' Sutherland, Statutory Construction* (Second Edition), Section 508, and cases there cited.

Confer,

Re *Neagle*, 135 U. S. 1, 58-59, 64-67 (Miller, J.).

B.—The powers exercised by the auditor in this case for the purpose of carrying into effect his statutory power and duty to "enforce the settlement" (Sec. 588 Administrative Code, as amended by Act. No. 3066 in 1923, *supra;* Appendix, *infra*, p. 20) were all well within those necessarily implied therein. They:—

(1) were only those customarily employed by auditors and comptrollers of the United States, whose powers are vested in the Insular auditor by Section 24 of the Organic Act (See Point III, pp. 21-24, of our original brief in support of the petition for writ of certiorari);

(2) did not contravene any express statutory provision either of the Organic Act or of the Philippine Legislature; since the funds affected were general allotments (that is to say, in effect, *appropriations* already made by the Legislature) to the City of Manila, not belonging to its educational fund or to any other special fund, and already allotted to it by statute; so that no further appropriation was required to take them out of the Insular Treasury and apply them to any municipal purposes, including the payment of the City's debts; and

(3) the drawing and countersigning of the appropriation warrant carrying the money from the credit balance of the City in the Insular Treasury to the credit balance of the Water District therein, was the only effective way of actually enforcing the settlement.

Anything short of that would merely have invited

further litigation or have required further legislative action. For instance, if these executive officers had stopped short, as Mr. Justice Ostrand suggests they might have done (Dissenting Opinion, R. 85) with the mere refusal of the auditor to countersign the collector's warrant in favor of the City, thus leaving the money available neither to the City nor to the Water District, it would not have been to "enforce the settlement" between these bodies as the law required the auditor to do; but would merely have been to put them in position so that both the Water District and the City would have been deprived of the funds (possibly of enough funds to cripple the Water District in the performance of its duties), and would have been required, if they could not agree among themselves, to resort to litigation or to petition the Legislature for further legislative action.

XI.

No private rights being here involved, but this being a controversy simply between two public administrative bodies, both branches (in effect at least) of the Insular Government, relating to a matter of administrative procedure, viz., the proper assignment of public funds between these two public bodies, the administrative remedy by appeal from the auditor to the Governor General and thence to the Secretary of War provided by Sections 24 and 25 of the Organic Act (39 Stat. 553-555; Appendix; *infra*, pp. 18-20) **should be exhausted before the courts interfere.** (See Point VIII, pp. 33-35, of our original brief in support of petition for a writ of certiorari herein).

It is submitted that the quotation there made (p. 35) from the opinion of this court in the *Pitcairn Coal Company* case, viz.,

> "We see no escape from the conclusion that the grievances complained of were primarily within the administrative competency of the Interstate Commerce Commission and not subject to be judicially enforced, at least until that body clothed by the statute with authority on the subject, had been afforded by a complaint made to it the opportunity to exert its adminis-

trative functions" (*Baltimore & Ohio Railroad Co.* v. *Pitcairn Coal Company*, 215 U. S. 481, 493; WHITE, J.), is peculiarly applicable; and *is controlling.*

XII.

No question of "due process of law" is here involved. No private rights are in issue. It is simply a question of proper procedure in allotting public funds between two public bodies, both parts of the same Insular Government.

CONCLUSION

The auditor's decision and action having been therefore

(1) correct on the merits,

(2) within the statutory powers and duties imposed upon him,

(3) properly adapted to perform his statutory duty to "enforce settlement" between these two administrative bodies of the Insular Government, and well within the powers reasonably and necessarily implied from that statutory grant of power and imposition of duty upon him; and

(4) not subject to review in the courts; at least until after the administrative remedy by appeal to the Governor General and the Secretary of War have been exhausted;

it follows that the Supreme Court of the Philippine Islands erred in entertaining jurisdiction of this suit, as well as in its decree, and that its judgment and decree should be reversed, and it should be directed to dismiss the City's petition for want of jurisdiction.

Respectfully submitted,

WILLIAM CATTRON RIGBY,
L. H. HEDRICK,
O. R. McGUIRE,
Attorneys for Petitioners.

APPENDIX STATUTES

I. Philippine Organic Act, "Jones Law".

II. Philippine Statutes.

III. Accounting Officers of the Treasury.

APPENDIX—STATUTES

I.

PHILIPPINE ORGANIC ACT, "JONES LAW," 39 STAT. 545, ET SEQ.

Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act.
39 Stat. 547.

Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States.
39 Stat. 547.

Sec. 7 (first paragraph). That the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.
39 Stat. 547.

Sec. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act.
39 Stat. 547.

Sec. 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "The Philippine Legislature": *Provided*, That until the Philippine Legislature as herein provided shall have been organized the existing Philippine Legislature shall have all legislative authority herein granted to the government of the Philippine Islands, except such as may now be within the exclusive jurisdiction of the Philippine Commission, which is so continued until the organization of the legislature herein provided for the Philippines. When the Philippine Legislature shall have been

organized, the exclusive legislative jurisdiction and authority exercised by the Philippine Commission shall thereafter be exercised by the Philippine Legislature.
39 Stat. 548-549.

Sec. 19 (first sentence of second paragraph). All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same.
39 Stat. 551.

Sec. 21. That the supreme executive power shall be vested in an executive officer, whose official title shall be "The Governor General of the Philippine Islands." He shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and hold his office at the pleasure of the President and until his successor is chosen and qualified. The Governor General shall reside in the Philippine Islands during his official incumbency, and maintain his office at the seat of government. He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint; but appointments made while the senate is not in session shall be effective either until disapproval or until the next adjournment of the senate. He shall have general supervision and control of all the departments and bureaus of the government in the Philippine Islands as far as is not inconsistent with the provisions of this Act, and shall be commander in chief of all locally created armed forces and militia. He is hereby vested with the exclusive power to grant pardons and reprieves and remit fines and forfeitures, and may veto any legislation enacted as herein provided. He shall submit within ten days of the opening of each regular session of the Philippine Legislature a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the islands, or summon the posse com itatus, or call out the militia or other locally created armed

forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privileges of the writ of habeas corpus, or place the islands, or any part thereof, under martial law: *Provided,* That whenever the Governor General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor General. He shall annually and at such other times as he may be required make such official report of the transactions of the government of the Philippine Islands to an executive department of the United States to be designated by the President, and his said annual report shall be transmitted to the Congress of the United States; and he shall perform such additional duties and functions as may in pursuance of law be delegated or assigned to him by the President.

39 Stat. 552-553.

Sec. 24. That there shall be appointed by the President an auditor, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine government and of the provincial and municipal governments of the Philippines, including trust funds and funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government or the Provinces or municipalities thereof. He shall perform a like duty with respect to all government branches.

He shall keep the general accounts of the government and preserve the vouchers pertaining thereto.

It shall be the duty of the auditor to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

There shall be a deputy auditor appointed in the same manner as the auditor. The deputy auditor shall sign such official papers as the auditor may designate and perform such other duties as the auditor may prescribe, and in case of the death, resignation, sickness, or other absence of the auditor from his office, from any cause, the deputy auditor shall have charge of such office. In case of the absence from duty, from any cause, of both the auditor and the

deputy auditor, the Governor General may designate an assistant, who shall have charge of the office.

The administrative jurisdiction of the auditor over accounts, whether of funds or property, and all vouchers and records pertaining thereto, shall be exclusive. With the approval of the Governor General he shall from time to time make and promulgate general or special rules and regulations not inconsistent with law covering the method of accounting for public funds and property, and funds and property held in trust by the government or any of its branches: *Provided,* That any officer accountable for public funds or property may require such additional reports or returns fom his subodinates or others as he may deem necessay for his own information and protection.

The decisions of the auditor shall be final and conclusive upon the executive branches of the government, except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year, in the manner hereinafter prescribed. The auditor shall except as hereinafter provided, have like authority as that conferred by law upon the several auditors of the United States and the Comptroller of the United States Treasury and is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office.

As soon after the close of each fiscal year as the accounts of said year may be examined and adjusted the auditor shall submit to the Governor General and the Secretary of War an annual report of the fiscal concerns of the government, showing the receipts and disbursements of the various departments and bureaus of the government and of the various provinces and municipalities, and make such other reports as may be required of him by the Governor General or the Secretary of War.

In the execution of their duties the auditor and the deputy auditor are authorized to summon witnesses, administer oaths, and to take evidence, and, in the pursuance of these provisions, may issue subpoenas and enforce the attendance of witnesses, as now provided by law.

The office of the auditor shall be under the general supervision of the Governor General and shall consist of the auditor and deputy auditor and such necessary assistants as may be prescribed by law.

39 Stat. 553-554.

Sec. 25. That any person aggrieved by the action or decision of the auditor in the settlement of his account or claim may, within one year, take an appeal in writing to the Governor General, which appeal shall specifically set forth the particular action of the auditor to which exception is taken, with the reason and authorities relied on for reversing such decision.

If the Governor General shall confirm the action of the auditor, he shall so indorse the appeal and transmit it to the auditor, and the action shall thereupon be final and conclusive. Should the Governor General fail to sustain the action of the auditor, he shall forthwith transmit his grounds for disapproval to the Secretary of War, together with the appeal and the papers necessary to a proper understanding of the matter. The decision of the Secretary of War in such case shall be final and conclusive.

39 Stat. 554-555.

II.

PHILIPPINE ADMINISTRATIVE CODE, ACT NO. 2711

A—POWERS AND DUTIES OF THE AUDITOR

Sec. 582. *Chief officials of Bureau of Audits.*—The Bureau of Audits shall have one chief and one deputy chief appointed by the President. These officers shall be respectively the Auditor for the Philippine Islands and the Deputy Auditor for the Philippine Islands. For brevity they may be designated as the Auditor and the Deputy Auditor, respectively, when the full title of the office otherwise appears in the document or paper requiring signature; and for the purpose of discrimination the term Insular Auditor may be used.

Sec. 588. *Authority of auditor in adjustment of accounts between offices.*—The Insular Auditor shall have the power, subject to such regulations as may be prescribed therefor, to authorize and enforce the settlement of accounts subsisting between the different Bureaus or Offices of the Insular service; between any such Bureau or Office and any provincial, municipal, or city government; between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments (*As amended by Act 3066*).

Sec. 593. *Auditing districts; assignment and compensation of district auditors.*—The provinces of the Philippine Islands, the chartered cities and the Metropolitan Water

District, which shall be regarded as provinces, are hereby divided into twenty-two regular and one special auditing districts and the Insular Auditor is hereby authorized to appoint a district auditor to each of the regular auditing districts and one district auditor at large to the special auditing district. Said districts are hereby numbered, constituted, and established as follows:

* * * * * * *

Seventh.—City of Manila and Metropolitan Water District.

* * * * * * *

The seventh auditing district shall be under the direct supervision of the central office of the Bureau of Audits. Each division shall be under one supervising district auditor, who shall be paid an annual salary of five thousand pesos and shall inspect and supervise the work of the several district auditors of his division. The supervising district auditor shall have the same power and authority as the district auditors in all matters coming before the latter for examination and settlement or decision in accordance with law.

The annual salary of the district auditor permanently assigned to the seventh auditing district shall be * * *. (*As amended by Act 3066*).

Sec. 621. *Countersigning of warrants by Auditor.*—No Insular warrant shall be paid by the Treasurer until countersigned by the Auditor or by an officer of the Bureau of Audits thereunto authorized in writing by him.

B.—CITY OF MANILA

Sec. 2428. *Corporate character of City of Manila.*—The City of Manila constitutes a political body corporate and as such is endowed with the attribute of perpetual succession and possessed of the powers which pertain to a municipal corporation, to be exercised in conformity with the provisions of this charter.

Sec. 2429. *Seal and general powers of city.*—The city may have a common seal, and alter the same at pleasure, and may take, purchase, receive, hold, lease, convey and dispose of real and personal property for the general interests of the city, condemn private property for public use, contract and be contracted with, sue and be sued, and prosecute and defend to final judgment and execution, and exercise all the powers hereinafter conferred.

Sec. 2434. *The mayor; his appointment and compensation.*—The mayor shall be the chief executive of the city, and as such, shall have immediate control over the executive functions of the different departments, **subject to the authority and supervision of the Secretary of the Interior. The mayor shall be appointed by the Governor-General with the consent of the Senate,** shall hold office for three years **unless sooner removed,** and shall receive a salary of ten thousand pesos a year.

With the approval of the Secretary of the Interior first had, the Municipal Board may, in its discretion, provide quarters for the mayor or commute the same, in addition to his salary (*As amended by Act 2774*).

Sec. 2436 (first sentence). *Execution of authorized public works and improvements.*— **Unless the Secretary of the Interior shall otherwise direct,** all public works of construction, repair, and improvement of the city shall be carried on by administration, under the direction of the mayor. (*As amended by Act 2774*).

Sec. 2439. *Constitution and organization of Municipal Board.*—The Municipal Board shall be the legislative body of the city, and shall consist of ten elective members who shall hold office for three years. The members of the Board shall elect each year from among their number a president, who for one year shall preside at all meetings of the Board at which he is present. In his absence, the Board shall elect one of its members as temporary presiding officer. The president shall sign all ordinances, and all resolutions and motions directing the payment of money or creating liability, enacted or adopted by the Board. **In case of sickness or absence of any member of the Board, or if for any reason it becomes necessary to maintain a quorum, the Governor-General may make a temporary appointment until the return to duty of the sick or absent member.** During the period of such temporary appointment the person receiving the same shall possess all the rights and perform all the duties of a member of the Board.

The president of the Board shall receive a per diem of forty pesos and the other members shall receive a per diem of twenty-five pesos for each day of attendance on a session of the Board (*As amended by Act 2774*).

Sec. 2440 (first sentence and last two sentences). *Qualifications, election, suspension and removal of members of Board.* The members of the Municipal Board shall be elected at large from the entire city, and each of them at the time of his election shall be a resident for at least one

year, and a qualified elector, of his Assembly district, and not less than twenty-three years of age. * * * If any person so elected is ineligible to hold office, or if for any reason there should be a failure to elect one or more members, no special election shall be called, **but the vacancy shall be filled for the term by the Governor-General with the consent of the Philippine Senate.** Vacancies in the office of member occurring after taking office shall be filled for the unexpired term in like manner.

Sec. 2442. *Appropriations by Board—Contributions from Insular Government.*—The Board shall make all appropriations for the expenses of the government of the city. Whenever the Board fails to pass an appropriation ordinance for any year before the end of the previous year, the appropriation ordinance for such previous year shall be deemed reenacted, and shall go into effect on the first day of January of the new year as the appropriation ordinance for that year, and such appropriation ordinance shall be deemed reenacted from year to year, and shall be renewed and go into effect on the first day of January of each year, as the appropriation ordinance for that year, until a new appropriation ordinance is duly enacted. In consideration of the privileges and exemptions enjoyed by the Insular Government within the city, and the burden imposed upon the city by reason of the location therein of the capital of the Islands, **there is hereby created a permanent continuing appropriation during the time said city remains the capital of the Islands, from any funds in the Insular Treasury not otherwise appropriated, equal to thirty per centum of the expenses of the government of the city** exclusive of those amounts which appear as expenses by reason of interdepartmental charges and charges against the Insular Government for land transportation and other analogous services and supplies; but the total contribution from Insular funds to the government of the city under this appropriation shall not in any one year exceed the amount of the proceeds of the real-estate tax collected by the said city during the next preceding year, nor shall such total contribution in any one year exceed the sum of one million pesos. **The Insular Auditor shall ascertain from time to time the amount herein appropriated, and transfer to the City of Manila, out of any funds in the Insular Treasury not otherwise appropriated, the amount so ascertained.**

Sec. 2443. *Method of transacting business by Board—Veto, authentication and publication of ordinances.*—**Unless the Secretary of the Interior orders otherwise, the**

Board shall hold two ordinary sessions for the transaction of business duing each week on days which it shall fix by resolution, and such extraordinary sessions, not exceeding thirty during any one year, as may be called by the mayor. It shall sit with open doors unless otherwise ordered by an affirmative vote of seven members. It shall keep a record of its proceedings and determine its rules of procedure not herein set forth. Six members of the Board shall constitute a quorum for the transaction of business, and six affirmative votes shall be necessary for the passage of any ordinance, resolution or motion. The ayes and noes shall be taken and recorded upon the passage of all ordinances, upon all resolutions or motions directing the payment of money or creating liability, and, at the request of any member, upon any other resolution or motion. Each proposed ordinance shall be published in two daily newspapers of general circulation in the city, one printed in English and the other in Spanish, and shall not be discussed or enacted by the Board until after the third day following such publication. Each ordinance enacted by the Board, and each resolution or motion directing the payment of money or creating liability, shall be forwarded to the mayor for his approval. Within ten days after the receipt of the ordinance, resolution or motion, the mayor shall return it with his approval or veto. If he does not return it within that time, it shall be deemed to be approved. If he returns it with his veto, his reasons therefor in writing shall accompany it. It may then be again enacted by the affirmative votes of seven members of the Board, and again forwarded to the mayor for his approval, and if within ten days after its receipt he does not again return it with his veto, it shall be deemed to be approved. If within said time he again returns it with his veto, **it shall be forwarded forthwith to the Governor-General for his approval or disapproval, which shall be final.** The mayor shall have the power to veto any particular item or items of an appropriation ordinance, or of any ordinance, resolution or motion directing the payment of money or creating liability, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to ordinances, resolutions and motions returned to the Board with his veto. Each approved ordinance shall be sealed with the city seal, signed by the president of the Board and the secretary, and recorded in a book kept for that purpose; shall be published in two daily newspapers of general cir-

culation in the city, one printed in English and the other in Spanish, within ten days after its approval; and shall take effect and be in force on and after the twentieth day following its publication, if no date is fixed in the ordinance.

Sec. 2847. *Appointment and removal of officials and employees.*—**With the consent of the Philippine Senate, the Governor-General shall appoint the fiscal of the city and his assistants, the judge and the clerk of the municipal court and, in case of a temporary vacancy on such court, an acting judge therefor, the justice and auxiliary justice of the peace, the city engineer and his assistant, the chief of police and his assistant, the chief of the fire department, the city treasurer, the city assessor, and the city superintendent of schools.** Subject to the provisions of the Civil Service Law, the mayor shall appoint all other officers and employees of the city whose appointment is not otherwise provided for by law. The mayor may suspend, and remove, any appointive city officer or employee not appointed by the Governor-General, **and may recommend to the Governor-General the suspension or removal of any city officer or employee appointed by him. Any such suspension or removal by the mayor shall be appealable to the Department Head, whose determination in the matter shall be final.** (*As amended by Act 2081*).

Sec. 2850. *The Bureau of Audits.*—**The Insular Auditor** shall receive and audit all accounts of the city, in accordance with the provisions of law relating to Government accounts and accounting.

Sec. 2851. *The Bureau of the Treasury.*—**The Insular Treasurer** shall receive and safely keep all moneys arising from the revenues of the city, and shall expend the same upon warrants drawn in accordance with the provisions of law.

Sec. 2854 (first sentence). *The Bureau of Education.*—**The Director of Education shall exercise the same jurisdiction and powers in the city as elsewhere in the Islands**, and the city superintendent of schools shall have all the powers and duties in respect to the schools of the city as are vested in division superintendents in respect to the schools of their divisions.

Sec. 2856. *The Philippine Health Service.*—**The Director of Health** shall have general supervision and control of health and sanitary matters and inspection in the city, and the Philippine Health Service shall serve as the local board of health.

Sec. 2457. *The Bureau of Prisons.*—**The Director of Prisons** shall set apart a suitable portion of Bilibid Prison for city prisoners, and shall receive for confinement and detention all persons who have been sentenced to imprisonment by the municipal court of the city. The expense of maintaining such portion of the prison shall be paid out of city funds.

Sec. 2465 (first sentence). *The fiscal of the city—His assistants—His duties.*—The law department shall consist of the fiscal of the city and of seven assistants, who shall discharge their duties **under the general supervision of the Attorney-General.**

Sec. 2480 ("(a)", "(c)", "(g)" and "(h)"). *Powers and duties of the city treasurer.*—

(a) There shall be a city treasurer, who shall have charge of the department of finance and shall act as chief fiscal officer and financial adviser of the city and custodian of its funds.

(c) Unless otherwise specifically provided by law or regulations, he shall perform in and for the city the duties imposed by law or regulation upon **provincial treasurers generally**, as well as the other duties imposed upon him by the preceding sections of this chapter.

(g) He shall be accountable for all funds and property of the city and shall render such accounts in connection therewith **as may be prescribed by the Insular Auditor.**

(h) He shall deposit daily all municipal funds and collections **in the Insular Treasury or in a Government depositary.** (*As amended by Acts 2043 and 3169*).

C—INTERNAL-REVENUE ALLOTMENT LAW

ARTICLE II.—*Disposition and allotment of internal revenue in general*

Sec. 490. *Disposition of internal revenue in general.*—Internal revenue collected under the laws of the Philippine Islands and not applied as hereinabove provided or otherwise specially disposed of by law shall accrue to the Insular Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment under the next succeeding section.

Sec. 491. *Allotments of internal revenue for special purposes.*—Of the internal revenue accruing to the Insular Treasury under the preceding section there shall be set apart ten per centum as a provincial allotment, ten per

centum as a road and bridge allotment, and twenty per centum as a municipal allotment; but the amounts allotted to said several purposes during any year shall not be greater than the amount allotted for the same purposes during the fiscal year nineteen hundred and nine.

Sec. 492. *Apportionment and use of provincial allotment.*—The provincial allotment shall be apportioned to the treasuries of the several respective provinces and shall there accrue to their general funds, respectively.

Sec. 494. *Apportionment and use of municipal allotment.*—The municipal allotment shall be for the benefit of the inhabitants of the Islands in the purview of their community requirements, being available for municipal or other use as hereinbelow provided.

In regularly organized provinces containing non-Christian inhabitants so much of the municipal allotment available for a particular province as pertains to its non-Christian inhabitants shall accrue to its non-Christian inhabitants' fund.

In specially organized provinces so much of the municipal allotment available for a particular province as does not pertain to municipalities or chartered cities shall accrue to the township and settlement fund of such province.

Such part of the municipal allotment as is not applied as hereinabove provided shall be distributed among the various municipalities and except as regards the City of Baguio **shall accrue in equal proportions to their general funds and school funds.** The share of the City of Baguio shall accrue wholly to its general fund.

Article III.—*Miscellaneous Provisions*

Sec. 495. *Status of cities, townships, and other local governmental divisions.*—For purposes of the allotment of internal revenue, a chartered city, township, or other local governmental division not constituting a part of a municipality proper shall have the status of a municipality and shall be deemed to be included under the term "municipality" as used in this chapter.

The City of Manila shall receive the shares which it would receive if it were both a municipality and a regularly organized province, and for the purposes hereof shall be deemed to be both the one and the other.

Sec. 496. *Apportionment to be based upon census population.*—Apportionments of internal revenue under the pro-

visions of this chapter shall be based on population as shown by the official census; but until a new census is taken or population otherwise determined according to law the proportionate share of the Mountain Province and Nueva Vizcaya and of the hill people in the Province of Samar shall be taken to be the same as in the apportionment of nineteen hundred and sixteen.

Provided, however, that in determining the amount of internal-revenue funds to be alloted to the provinces comprised within the Department of Mindanao and Sulu, the Auditor shall take into account the total approximate population of said provinces as certified to him by the Secretary of the Interior.

Sec. 497. *Warrants for quarterly payment of allotments.*—The payment of the internal-revenue allotments shall be made from the Insular Treasury quarterly, upon warrants drawn by the Collector of Internal Revenue.

D—METROPOLITAN WATER DISTRICT

No. 2832.—*An Act creating a public corporation denominated the Metropolitan Water District, prescribing its functions and activities, and for other purposes.*

Section 1. *Creation of the Metropolitan Water District; department of the Government to which it shall belong; its general purposes; zone comprised by it; domicile and place of business of the corporation.*—For the purpose of furnishing an adequate water supply and sewerage service to the inhabitants thereof, and for other purposes specified in this Act, there is hereby created, under the control, direction, and general supervision of the Secretary of the Interior, a public corporation which shall be known as the Metropolitan Water District.

The District shall comprise all territory within the boundaries of the city of Manila and the nearby municipalities of Montalban, San Mateo, Mariquina, Pasig, Pateros, San Pedro Macati, San Juan del Monte, San Felipe Neri, Caloocan, Malabon, Navotas, Pasay, and Paranaque: *Provided*, That the District Board, in the interest of the public service, may from time to time extend the area of said District by the admission or inclusion of contiguous municipalities.

The domicile and place of business of the District shall be in the city of Manila.

Sec. 2. *Powers and general functions of the District.*— The powers, functions, and activities of the Metropolitan Water District of Manila shall be the following:

(*a*) To have continuous succession under its corporate name until otherwise provided by law;

(*b*) To prescribe its by-laws;

(*c*) To adopt and use a seal and alter it at its pleasure;

(*d*) To sue and be sued in any court;

(*e*) To construct, maintain, and operate mains, pipes, water reservoirs, machinery, and other waterworks for the purpose of supplying water to the inhabitants of the District, both for domestic and other purposes; to purify the source of supply, regulate the control and use, and prevent the waste of water; and to fix and provide for the collections of rents therefor;

(*f*) To construct, maintain, and operate such systems of sanitary sewers as may be necessary for the proper sanitation of the District, and to charge and collect such sums for construction and rates for this service as may be determined by the Board to be equitable and just;

(*g*) To construct all such storm-drains as may be needed in the city of Manila and requested by the city, and to maintain and operate all existing drains, the city of Manila to appropriate sufficient funds for this purpose;

(*h*) To construct, maintain, and operate electric power and light system for the use of the Government, if deemed advantageous to the District, and utilize for this purpose all the water power of the Angat River; to fix such rents and collect such dues as may be deemed just and proper, and to sell the surplus power;

(*i*) To acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose of real and personal property, including rights and franchises, within or without the Metropolitan District, as authorized by the purpose for which the district was created and reasonably and necessarily required for the transaction of the lawful business of the same, unless otherwise provided in this Act.

(*j*) To contruct works across, or otherwise, any stream, watercourse, canal, ditch, flume, street, avenue, highway or railway as the location of said works may require, provided such works be constructed in such manner as to afford se-

curity for life and property, and provided, further, that the stream, watercourse, canal, ditch, flume, street, avenue, highway or railway so crossed or intersected be restored to their former state as near as may be, or in a manner not to have impaired unnecessarily their usefulness. Every person or entity whose right of way is crossed or intersected by said works shall not obstruct the forming of such crossings or intersections and shall grant the District the proper authority for the execution of such work. The District is hereby given the right of way to locate, construct, and maintain such works over and through any of the lands which are now or may be the property of the Government of the Philippine Islands or any of its branches and political subdivisions.

(*k*) To exercise the right of eminent domain for the purposes for which the District was created, in the manner provided by law for condemnation proceedings by the insular, provincial, and municipal governments.

(*l*) To enact such regulations as may be necessary for the sanitary protection of the watershed and the reservoirs and water mains, and for the proper operation of the sanitary sewers, subject to the approval of the Philippine Health Service; to enact regulations for the protection of the water and sewer service, and of the light service, as soon as established, and to fix penalties for violations of the regulations enacted under this subsection which shall not in any case exceed two hundred pesos fine or six months imprisonment, or both, in the discretion of the court.

(*m*) When essential to the proper administration of its corporate affairs or necessary for the proper transaction of its business or to carry out the purposes for which it was organized, to contract indebtedness and issue bonds, subject to the approval of the Secretary of Finance. The bonded indebtedness of the District, of all classes, shall not at any time exceed twelve million pesos, in addition to the bonds mentioned in section eight, and the issue thereof shall be subject to the conditions set forth in section five of this Act; and

(*n*) To carry out the business for which it was organized and exercise such powers and do such things as may be reasonably necessary to carry out the purpose for which it was organized.

Sec. 3. *District Board; its members, reports to the Department of the Interior.*—Unless otherwise provided by

law, all corporative powers of the Metropolitan Water District shall be exercised, its business managed, and its property kept and preserved, by a Board to be composed of the Mayor of the City of Manila, the President of the Municipal Board of the City of Manila, the Governor of the Province of Rizal, the Director of Public Works or his representative, the Engineer of the City of Manila, the City Treasurer, and a taxpayer of the district, being a resident of the City of Manila, appointed by the Governor-General, with the consent of the Senate.

The District Board shall render reports to the Secretary of the Interior as provided in sections five hundred and seventy-four to five hundred and seventy-seven, inclusive, of Act Numbered Twenty-seven hundred and eleven. (As amended by Act No. 3109, approved March 19, 1923.)

Sec. 4. *First meeting of the District Board; 'quorum;' votes necessary, in general, for adopting resolutions; appeal; per diem of members; secretary of the board and his salary.*—The President of the District Board shall, immediately after the appointment thereof, fix a time and place for the first meeting, at which the Board shall adopt rules of procedure and fix a time and place for holding regular meetings.

Not less than five members of the Board shall constitute a *quorum* for the transaction of business, and four affirmative votes shall be necessary for the adoption of any resolution or motion, except as herein otherwise provided.

The minority of the Board may appeal to the Secretary of the Interior from the decision or resolution of the majority within two days after a vote and said Secretary of the Interior shall forward such appeal, with his recommendation, to the Governor-General, whose decision shall be final in each case.

The members of the Board shall receive their necessary expenses while attending the meetings of the Board, which shall not exceed the sum of five pesos per day, and shall receive no other compensation as members of the District Board.

The Board shall appoint its Secretary and fix his salary. (As amended by Act. No. 3109, approved March 19, 1923.)

Sec. 5 (title only). *Resolution to incur indebtedness and issue bonds; their conditions, privileges, and exemptions; sinking fund; guaranty.* * * *

Sec. 6. *Conduct of affairs and current business; officers and employees of the District.*—The affairs and current business of the Metropolitan District shall be conducted under the direction of the District Board, by a manager, assistant manager, and such additional officers and employees as the Board may provide.

The duties and powers of said officers and employees shall be such as may be defined and prescribed by the District Board and not be inconsistent with the provisions of this Act.

The Manager and Assistant Manager shall be appointed by the Governor-General, by and with the consent of the Senate, and may be removed for cause by the Governor-General.

Sec. 7 (title only). *Manager and Assistant Manager of the District; their functions; salaries.* * * *

Sec. 8. *Assets and liabilities of the Manila water and sewer system; their transfer to the District; sinking fund and Government guaranty.*—The District Board is hereby authorized and directed to receive and assume on behalf of the Metropolitan Water District all assets and liabilities pertaining to the sewerage and waterworks system of the city of Manila, together with the sewerage and waterworks bonds sinking funds, and of all the indebtedness in general of the present sewer and water system of the City of Manila, and in turn to pledge such assets as security for the payment of the sewerage and waterworks bonded debt thus acquired.

The Government of the Philippine Islands guarantees the payment by the Metropolitan Water District of both principal and interest on said bonds, and the District Board shall create for the same a sinking fund, in the same manner and subject to the same conditions as provided in section five of this Act for the bonds issued by the District Board, and the sums or part of the sums, appropriated by virtue of said section five shall be used for the payment thereof.

Sec. 9. *Possession by the District of all sewer and water systems within its territory; charging and collection of uniform rates.*—The Metropolitan Water District shall own and control all the sewer and water distributing systems of the city of Manila and of the municipalities comprising the District and shall charge and collect a uniform rate for all

services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution.

Sec. 10. *Powers reserved to the Legislature.*—This Act or any part thereof may be amended or repealed at any date by legislative authority, and the Metropolitan Water District may be reorganized or dissolved by legislative provision.

Sec. 11. *Repeal of inconsistent legislation.*—All Acts or parts of Acts inconsistent with this Act are hereby repealed.

Sec. 12. *Date when effective.*—This Act shall take effect on its approval.

Approved, March 6, 1919.

E.—EXCISE TAX.—CITY'S ALLOTMENT.

No. 3065.—*An Act to establish a percentage tax on the business of the merchants, manufacturers, and commission merchants, and for other purposes.*

Section 1. All merchants, manufacturers, and commission merchants not otherwise specifically exempted according to the provisions of the present Internal Revenue Law shall in addition to similar taxes heretofore imposed pay an additional tax of one-half of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold.

Sec. 2. All administrative, special, general, and penal provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal revenue taxes applicable to business subject to the merchant's sales tax are hereby extended and made applicable to all the provisions of this Act.

Sec. 3. Ten per centum of the tax collected under this Act shall be distributed among the provinces and municipalities in accordance with the provisions of section four hundred and ninety-six of the Administrative Code, five

per centum accruing to the provinces and the other five to the municipalities.

Sec. 4. The tax established by this Act shall be in force and effect and be collected only upon business transacted from the date of the approval of this Act until December thirty-first, nineteen hundred and twenty-four.

Sec. 5. This Act shall take effect on its approval.

Approved March 16, 1923.

Chap. 170.—*An Act to amend the Act entitled "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1909," approved February 9, 1909.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1909," approved February 9, 1909, is amended by adding after the end of the first paragraph under the title "War Department" a new paragraph to read as follows:

That the taxes imposed by the Philippine Legislature in act numbered 3065, approved March 16, 1923, and act numbered 3183, approved November 27, 1924, are hereby legalized and ratified and the collection of all such taxes made under or by authority of said acts of the Philippine Legislature is hereby legalized, ratified, and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed.

(*Act of Congress, approved February 9, 1925; 43 Stat., 820.*)

F.—DISTRIBUTION OF POWERS OF PHILIPPINE GOVERNMENT.

Sec. 17. *Distribution of powers of government.*—The executive, legislative, and judicial powers of the Philippine Government are distributed, respectively, among the executive, legislative, and judicial branches severally exercising the functions and powers conferred on them by law.

The executive authority is vested in the following agencies: The Governor General of the Philippine Islands, as Chief Executive; the several Departments and Bureaus of the Insular Government, with their lawful instrumentalities; and the provincial and local governments, with their

subordinate functionaries, in the exercise of the administrative powers conferred on them.

The legislative power is vested in the Philippine Legislature, consisting of two Houses, to wit, the Senate and the House of Representatives.

The judicial power is vested in the Supreme Court, Courts of First Instance, courts of justices of the peace, and in such municipal and other inferior courts as may be created by law. (*Administrative Code, Sec. 17*).

III.

ACCOUNTING OFFICERS OF THE TREASURY.

"The auditor shall, except as hereinafter provided, have like authority as that conferred by law upon the several auditors of the United States and the Comptroller of the United States Treasury."

Philippine Organic Act, Sec. 24; 39 Stat. 554.

Sec. 236.—All claims and demands whatever by the United States or against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury.

(Revised Statutes, Sec. 236.)

Sec. 8. The balances which may from time to time be certified by the Auditors to the Division of Bookkeeping and Warrants, or to the Postmaster-General, upon the settlements of public accounts, shall be final and conclusive upon the Executive Branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government: *Provided,* That the Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the re-examination of any account.

Upon a certificate by the Comptroller of the Treasury of any differences ascertained by him upon revision the Auditor who shall have audited the account shall state an account of such differences, and certify it to the Division

of Bookkeeping and Warrants, except that balances found and accounts stated as aforesaid by the Auditor for the Post-Office Department for postal revenues and expenditures therefrom shall be certified to the Postmaster-General.

Any person accepting payment under a settlement by an Auditor shall be thereby precluded from obtaining a revision of such settlement as to any items upon which payment is accepted; but nothing in this Act shall prevent an Auditor from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement. When suspended items are finally settled a revision may be had as in the case of the original settlement. Action upon any account or business shall not be delayed awaiting applications for revision: *Provided*, That the Secretary of the Treasury shall make regulations fixing the time which shall expire before a warrant is issued in payment of an account certified as provided in sections seven and eight of this Act.

The Auditors shall, under the direction of the Comptroller of the Treasury, preserve, with their vouchers and certificates, all accounts which have been finally adjusted.

All decisions by Auditors making an original construction or modifying an existing construction of statutes shall be forthwith reported to the Comptroller of the Treasury, and items in any account affected by such decisions shall be suspended and payment thereof withheld until the Comptroller of the Treasury shall approve, disapprove, or modify such decisions and certify his actions to the Auditor. All decisions made by the Comptroller of the Treasury under this Act shall be forthwith transmitted to the Auditor or Auditors whose duties are affected thereby.

Disbursing officers, or the head of any Executive Department, or other establishment not under any of the Executive Departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.

Sections one hundred and ninety-one and two hundred and seventy of the Revised Statutes are repealed.

(Act of July 31, 1894, 28 Stat., 207-208.)

Sec. 11. Every requisition for an advance of money, before being acted on by the Secretary of the Treasury, shall be sent to the proper Auditor for action thereon as required by section twelve of this Act.

All warrants, when authorized by law and signed by the Secretary of the Treasury, shall be countersigned by the Comptroller of the Treasury, and all warrants for the payment of money shall be accompanied either by the Auditor's certificate, mentioned in section seven of this Act, or by the requisition for advance of money, which certificates or requisition shall specify the particular appropriation to which the same should be charged, instead of being specified on the warrant, as now provided by section thirty-six hundred and seventy-five of the Revised Statutes; and shall also go with the warrant to the Treasurer, who shall return the certificate or requisition to the proper Auditor, with the date and the amount of the draft issued indorsed thereon. Requisitions for the payment of money on all audited accounts, or for covering money into the Treasury, shall not hereafter be required. And requisitions for advances of money shall not be countersigned by the Comptroller of the Treasury.

Section two hundred and sixty-nine and so much of section three hundred and five of the Revised Statutes as requires the Register of the Treasury to record warrants is repealed.

(Act of July 31, 1894, 28 Stat. 209.)

Sec. 7. That whenever any Government bureau or department procures, by purchase or manufacture, stores or materials of any kind, or performs any service for another bureau or department, the funds of the bureau or department for which the stores or materials are to be procured or the service performed may be placed subject to the requisitions of the bureau or department making the procurement or performing the service for direct expenditure: *Provided*, That funds so placed with the procuring bureau shall remain available for a period of two years for the purposes for which the allocation was made unless sooner expended.

(Act of May 21, 1920, 41 Stat. 613.)

Sec. 304 (first paragraph). All powers and duties now conferred or imposed by law upon the Comptroller of the

Treasury or the six auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall, so far as not inconsistent with this Act, be vested in and imposed upon the General Accounting office and be exercised without direction from any other officer. The balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the Government. The revision by the Comptroller General of settlements made by the six auditors shall be discontinued, except as to settlements made before July 1, 1922.

(Budget and Accounting Act of 1921; 42 Stat. 24.)

SEC. 305. Section 236 of the Revised Statutes is amended to read as follows:

"SEC. 236. All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office."

(Budget and Accounting Act of 1921; 42 Stat. 24.)

SALES BY ONE DEPARTMENT, BUREAU, OR OFFICE, TO ANOTHER DEPARTMENT, BUREAU, OR OFFICE.

TREASURY DEPARTMENT,
Office of Comptroller of the Treasury,
Washington, June 11, 1906.

Treasury Department Circular No. 120, dated October 20, 1897, is hereby modified and amended to read as follows:

Hereafter vouchers for services rendered or supplies furnished by one Department, bureau, or office to another Department, bureau, or office must be sent directly to the proper accounting officer of the Treasury Department for settlement when practicable; otherwise the amount should be deposited to the credit of the proper appropriation.

Depositaries will issue certificates for such deposits in duplicate only. Such certificates should be referred to on the vouchers by giving the name of the depositary and number and date of the certificate. The accounting officers of the Treasury Department will allow credit for such deposits upon Treasury covering warrants.

R. J. TRACEWELL,
Comptroller.

Approved:

LESLIE M. SHAW,
Secretary of the Treasury.

(Treas. Cir. No. 48, June 11, 1906; 12 Comp. Dec. 838.)

SALES BY ONE DEPARTMENT, BUREAU, OR OFFICE, TO ANOTHER

TREASURY DEPARTMENT,
Office of Comptroller of the Treasury,
Washington, August 14, 1907.

Hereafter deposits by fiscal officers to cover services rendered or supplies furnished by one department, bureau, or office, to another shall be discontinued, and Treasury Department Circular No. 48, dated June 11, 1906, authorizing such deposits, is amended to read as follows:

"Hereafter, vouchers for services rendered or supplies furnished by one department, bureau, or office, to another department, bureau, or office must be sent directly to the proper accounting officer of the Treasury Department for settlement."

The above change of procedure is made necessary in order to conform the practice in the above cases to the system of bookkeeping installed in the Division of Bookkeeping and Warrants, Treasury Department, on July 1, 1907.

R. J. TRACEWELL,
Comptroller.

Approved:

JAMES B. REYNOLDS,
Acting Secretary of the Treasury.

(Treas. Cir. No. 54, Aug. 14, 1907; 14 Comp. Dec. 966.)

Supreme Court, U. S.
MAY 17 1926
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

No. 363

JUAN POSADAS, JR., AS COLLECTOR OF INTERNAL REVENUE, VICENTE CARAMONA, AS INSULAR TREASURER, BAS F. WEISSERT, AS INSULAR AUDITOR, AND THE METROPOLITAN WATER DISTRICT, *Petitioners*,

vs.

THE CITY OF MANILA, *Respondent*.

BRIEF OF RESPONDENT ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

ANTONIO BARTON,
LAWRENCE H. CAMP,
Counsel for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

No. 1173

JUAN POSADAS, JR., AS COLLECTOR OF INTERNAL REVENUE, VICENTE CARMONA, AS INSULAR TREASURER, BEN F. WRIGHT, AS INSULAR AUDITOR, AND THE METROPOLITAN WATER DISTRICT, *Petitioners*,

vs.

THE CITY OF MANILA, *Respondent*.

BRIEF OF RESPONDENT ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

The underlying dispute between the parties to this cause concerns the liability of the City of Manila to pay for water furnished by the Metropolitan Water District for municipal purposes. The direct issue in this case, however, is the jurisdiction and power of the Insular Auditor to settle that dispute by arbitrarily directing the diversion and payment to the Metropoli-

tan Water District of money in the Insular Treasury credited to the City of Manila as the City's share of the internal revenue collections, in which the Water District has no interest whatever.

It is unnecessary, therefore, to go into the merits of the dispute or the history of the water system of the City of Manila. The only questions presented by this petition are concerned with the power of the Insular Auditor, acting as an intermediary over the protest and objection of the City, to enforce a settlement, and the jurisdiction of the Supreme Court of the Philippine Islands to grant an injunction and writ of mandamus to prevent the interference of the Auditor.

It is sufficient, therefore, for the purpose of stating the issues in this case, to say that for many years the City of Manila operated a water system, deriving its authority from the old Spanish laws, from the acts of the United States Philippine Commission, and from the Act of Congress approved July 1, 1902; that in 1919, in view of the constant increase of the population and other considerations, the Philippine Legislature, by Act No. 2832, March 6, 1919, created the Metropolitan Water District, a public corporation, including within its territory the City of Manila and certain neighboring municipalities, and providing that the water district

> "shall own and control all the * * * water distributing systems of the City of Manila and all the municipalities comprising the District, and shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution."

That since that time the Water District has furnished water to the City of Manila for municipal purposes; and that the City has refused to pay for such service claiming it is entitled to such service free of charge.

The Water District began furnishing water to the City in 1919, and has done so ever since. The dispute over payment has likewise continued ever since. In 1921 the Water District complained to the Insular Auditor who assumed jurisdiction and decided that the City was indebted to the Water District for the service furnished by the Water District. To enforce his decision the Insular Auditor thereupon directed the Collector of Internal Revenue to draw warrants in favor of the Water District against the City's apportionment of internal revenue collections in the Insular Treasury in settlement of the claim of the Water District against the City. The warrants were drawn and countersigned by the Auditor and the payments were made to the Water District and charged against the City's apportionment of the internal revenue collections. The Water District continued to furnish water to the City. The latter continued its refusal to pay for the service, on the ground that it was entitled to free service, and the Auditor continued to "enforce settlement" in the manner described.

January 8, 1925, the City instituted this proceeding in the Supreme Court of the Philippine Islands against the Insular Collector of Internal Revenue, the Insular Auditor, the Insular Treasurer, and the Metropolitan Water District, praying an injunction to restrain the continued drawing of warrants in favor of the Water District and the charging of such amounts against funds of the City and a writ of mandamus to require the Collector of Internal Revenue to draw and the

Auditor to countersign warrants in favor of the City for its share of the internal revenue collections.

The Supreme Court of the Philippine Islands granted a preliminary injunction and overruled a demurrer filed by the defendants, the Collector of Internal Revenue, the Auditor, the Treasurer, and the Metropolitan Water District. Thereafter an answer was filed by the defendants. The City demurred to the answer. After hearing argument the court sustained the City's demurrer to the answer, and—the defendants electing to stand upon their answer—directed that the injunction be made permanent and that a writ of mandamus issue requiring the Collector of Internal Revenue to draw in favor of the City, and not the Metropolitan Water District, all warrants in payment of the City's share in the internal revenue or other fiscal collections.

It is to review that judgment of the Supreme Court of the Philippine Islands that this petition for a writ of certiorari is sought.

THE QUESTIONS OF LAW

1. *Was Any Jurisdiction Vested in the Insular Auditor to Settle and Adjudicate the Dispute Between the City and the Metropolitan Water District?*

The Auditor relied generally upon section 24 of the Act of August 29, 1916, ch. 416, 39 Stat. 545, which provides:

> "Sec. 24. That there shall be appointed by the President an auditor, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine government and of the provincial and municipal governments of the Philippines, including

trust funds and funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government or the Provinces or municipalities thereof. He shall perform a like duty with respect to all government branches.

He shall keep the general accounts of the government and preserve the vouchers pertaining thereto.

It shall be the duty of the auditor to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

* * * * * * *

"The administrative jurisdiction of the auditor over accounts, whether of funds or property, and all vouchers and records pertaining thereto, shall be exclusive."

* * * * * * *

"The decisions of the auditor shall be final and conclusive upon the executive branches of the government, except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year, in the manner hereinafter prescribed. The auditor shall, except as hereinafter provided, have like authority as that conferred by law upon the several auditors of the United States and the Comptroller of the United States Treasury and is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office."

And on section 588 of the Administrative Code, 1917, as amended by Act No. 3066, enacted in 1923, which provides:

> "The Insular auditor shall heve the power * * * to authorize and enforce the settlement of accounts subsisting between the different bureaus or offices of the Insular service; between any such bureau or office and any provincial, municipal, or city government; between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments."

In support of his assumption of jurisdiction under the last quoted section of the Administrative Code, 1917, he also relied on section 593 of the same law, which provides:

> "The provinces of the Philippine Islands, the chartered cities and the Metropolitan Water District, which shall be regarded as provinces, are hereby divided into twenty-two regular and one special auditing districts, and the Insular Auditor is hereby authorized to appoint a district auditor to each * * *. Said districts are hereby numbered, constituted, and established as follows:
>
> * * * * * * *
>
> Seventh: City of Manila and Metropolitan Water District."

The City contends, on the other hand, that the assumption by the Auditor of jurisdiction and power to adjudicate and enforce the settlement of this dispute between the City and the Metropolitan Water District was wholly without warrant or authority of law. In that contention the City has been upheld by the Supreme Court of the Philippine Islands.

The first objection to the assumption of jurisdiction by the Auditor is that the money in the treasury alloted to the City as its share of the internal revenue collections is public money constituting a special fund

for certain purposes, that is, for the use and benefit of the City, and can be paid out only pursuant to a legislative appropriation.

The act of August 29, 1916, ch. 416, 39 Stat. 545, provides:

> "That no money shall be paid out of the treasury except in pursuance of an appropriation by law. * * *
>
> "That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only."

And in section 8:

> "That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act." . .

The Administrative Code, 1917, enacted by the Philippine Legislature, provides for the disposition of internal revenue collections as follows:

> Sec. 490.—"*Disposition of internal revenue in general.*—Internal revenue collected under the laws of the Philippine Islands and not applied as hereinabove provided or otherwise specially disposed of by law shall accrue to the Insular Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment under the next succeeding section."
>
> Sec. 491.—"*Allotments of internal revenue for special purposes.*—Of the internal revenue accruing to the Insular Treasury under the preceding section there shall be set apart ten per centum as a provincial allotment, ten per centum as a road

and bridge allotment, and twenty per centum as a municipal allotment; but the amounts allotted to said several purposes during any year shall not be greater than the amount allotted for the same purposes during the fiscal year nineteen hundred and nine."

Sec. 492.—"*Apportionment and use of provincial allotment.*—The provincial allotment shall be apportioned to the treasuries of the several respective provinces and shall there accrue to their general funds, respectively."

Sec. 494.—"*Apportionment and use of municipal allotment.*—The municipal allotment shall be for the benefit of the inhabitants of the Islands in the purview of their community requirements, being available for municipal or other use as hereinbelow provided."

Sec. 495.—"* * * The City of Manila shall receive the shares which it would receive if it were both a municipality and a regularly organized province, and for the purposes hereof shall be deemed to be both the one and the other."

Sec. 497.—"*Warrants for quarterly payment of allotments.*—The payment of the internal-revenue allotments shall be made from the Insular Treasury quarterly, upon warrants drawn by the Collector of Internal Revenue."

It is clear that the City's share of the internal revenue collections is a share in public money which has been assessed and collected for governmental purposes. In so far as the City of Manila is concerned, its share of that money was assessed and collected for a specific purpose. It must be treated, therefore, as "a special fund in the treasury and paid out for such purpose only." To withdraw it or divert it for any other purpose (as here, for example, to direct its diversion to pay an alleged debt due from the City to a public corporation, notwithstanding the objection

and protest of the City) is contrary to the express direction of the Organic Act. An appropriation of the money in the Treasury to the credit of the City can only be made by the legislature of the Philippine Islands or the legislative body of the City of Manila, which is the Municipal Board created by sections 2439-2444 of the Administrative Code, 1917 (R. 60-61).

There is no claim or pretense that any appropriation has ever been made to pay the claim of the Metropolitan Water District, or even that there has been any adjudication of the asserted legal liability, except the decision and action of the Auditor complained of in this proceeding. Yet in legal effect the Auditor has undertaken to divert money which belongs to the City of Manila and which is in the treasury of the Philippine Islands, for the purpose of enforcing settlement of his decision. Neither the Auditor nor any other person has any authority of law to withdraw or divert money from the treasury for any purpose "except in pursuance of an appropriation by law." There is no claim or pretense that any appropriation has ever been made to pay the claim of the Metropolitan Water District against the City of Manila. As this court has said, in *Reeside* v. *Walker*, 11 How. 272, 291—

> "However much money may be in the treasury at any one time, not a dollar of it can be used in the payment of any thing not thus previously sanctioned. *Any other course would give to the fiscal officers a most dangerous discretion.*"

Neither section 24 of the Act of August 29, 1916, nor section 588 of the Administrative Code, 1917, quoted above, on which the Auditor relied, are authority for his action in undertaking to adjudicate a question of

legal liability between the City and the Water District, and to compel the payment of the "judgment" so rendered by directing the diversion of the money in the treasury already allotted to the city. The Auditor's action was plainly a usurpation of a judicial function and was wholly without warrant or authority of law.

A further objection to the assumption of jurisdiction by the Auditor of this dispute between the City and the Metropolitan Water District is that the decisions of the Auditor, although they may be in some cases in the exercise of a quasi-judicial function, are final and conclusive only upon the executive branches of the Government. The City of Manila is not an "executive branch" of the Philippine Government. It is a municipal corporation exercising executive, legislative, and judicial powers. The chief executive officer is the Mayor, who is appointed by the Governor General. The legisative body is the Municipal Board which consists of ten members who are elected by a direct vote of the people. Sections 2427-2468 of the Administrative Code, 1917 (Rec. 60-62).

There is nothing in the act of August 29, 1916, from which the Auditor derives his powers, which confers upon him jurisdiction of any kind, whether administrative or quasi-judicial, over a dispute between a municipal corporation, as the City of Manila, and a public corporation such as the Metropolitan Water District, to compel such a municipal corporation to pay an alleged debt by ordering a diversion of money held in the treasury for the use and benefit of the municipality. As the Supreme Court of the Philippine Islands said in its opinion in this case, "No authority has been cited, and none will ever be found to

legalize such a proceeding" (R. 73). On this decisive point, Justice Street, who concurred in the result although not agreeing with all that was said in the majority opinion, said:

> "The Insular Auditor certainly does not have the power to put his hands into the city treasury and take out money to pay its debts however meritorious the obligation; and if he does not have this power he cannot intercept and divert funds in course of transmission to the city."

A further objection to the assumption of jurisdiction by the Auditor is that the dispute between the City and the Water District is one which can only be settled satisfactorily by judicial process and determination. Among other defenses to the claim of the Water District the City contends that any title which the Water District may now have in and to the water system is held by the Water District in trust for the use and benefit of the City. That is an equitable defense on which the City has a right to be heard. The courts of law and equity are established for the purpose of settling such questions. Under their respective charters both the Metropolitan Water District and the City can sue and be sued. If the Metropolitan Water District has a valid claim against the City, that fact can be ascertained and determined in a judicial proceeding for that purpose, in the same manner as any other legal liability. If, as the City contends, the Water District holds the title to the water system in trust for the use and benefit of the City, that fact can also be determined in the same manner and in the same proceeding. It would be a gross perversion of justice and American institutions to permit or to sanction the

action of the Auditor in this case in assuming jurisdiction not only to decide the matter in dispute but also to enforce payment by diverting money in the treasury which has been set aside by law for the use and benefit of the City. In doing so, the Auditor has assumed not only the judicial function but also the legislative function.

2. *The Jurisdiction of the Supreme Court of the Philippine Islands to Grant the Injunction and Writ of Mandamus.*

The jurisdiction of the Supreme Court of the Philippine Islands in this proceeding depends on the answer to the first question. Of course, if the Auditor was vested with jurisdiction to settle and adjudicate a dispute between the City and the Metropolitan Water District and to enforce a settlement by directing payment from the money in the treasury to the credit of the City, the court would be without jurisdiction to restrain him. The question of the Auditor's power is the vital question in the case. If he has the power claimed for him there is nothing more to the case. But if it be found, as a matter of law, that he has no such power as he has claimed, and that his acts are without authority of law, then certainly the court has jurisdiction to restrain him and the other defendants from acting beyond their authority, and to issue a writ of mandamus to require the performance of the duties imposed on them by law, that is, the drawing and countersigning of warrants in favor of the City for the money in the treasury to its credit.

In such cases as this, the jurisdiction of the court depends on whether there is or is not ground for an

injunction or a writ of mandamus. If there is, the court has jurisdiction. If there is not, the court has no jurisdiction. But the defendants whose authority to act in a certain way under the law is challenged cannot come in and evade defending their acts by asserting that the court lacks jurisdiction. Any officer acting beyond his authority under the law may be enjoined upon the application of any one who shows that he is being injured by such unauthorized acts. Likewise any officer who refuses to perform a ministerial duty imposed by law may be required to do so by mandamus.

Noble v. Union River Logging R. R. Co., 147 U. S. 165.
Lane v. *Hoglund*, 244 U. S. 174.

Accounting officers are not exempt from the rule.

Smith v. *Jackson*, 246 U. S. 388.
McCarl v. *Cox*, 8 Fed. (2nd), 669.
Dillon v. Groos, 299 Fed. 851.
Mare v. *Alexander*, 2 Fed. (2nd) 895, 5 Fed. (2nd) 964.
Pence v. *McCarl*, 54 W. L. R. 178.

The suggested appeal to the Governor General from the action of the Auditor, under section 25 of the Act August 29, 1916, is no remedy at all. Such an appeal would necessarily admit that the Auditor had jurisdiction in the first instance, which is the only real issue in the case. If he has no jurisdiction he may be enjoined from acting. If he has jurisdiction there is no case anyway. The only way to test the question of jurisdiction is by resort to the courts.

CONCLUSION

The City being lawfully entitled to the money in the treasury, there set aside as the City's share of the internal revenue collections, and the Auditor's action in fixing a liability on the City, over its insistent and continued protest, and in directing payment out of the fund in the treasury, being without warrant or authority of law,—the Supreme Court of the Philippine Islands rightly enjoined the defendants from diverting the money to the Metropolitan Water District and rightly issued a writ of mandamus to require its payment to the City.

Respectfully submitted,

ALEXANDER BRITTON,
LAWRENCE H. CAKE,
Counsel for Respondent.

FILED
APR 25 1927
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

No. 363.

OCTOBER TERM, 1926.

JUAN POSADAS, JR., Collector of Internal Revenue,
VICENTE CARMONA, Insular Treasurer,
BEN F. WRIGHT, Insular Auditor, and
METROPOLITAN WATER DISTRICT,
Petitioners,

v.

CITY OF MANILA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE RESPONDENT.

GUILLERMO B. GUEVARA,
F. W. CLEMENTS,
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IN THE

Supreme Court of the United States

No. 363

OCTOBER TERM, 1926

JUAN POSADAS, JR., Collector of Internal Revenue,
VICENTE CARMONA, Insular Treasurer,
BEN F. WRIGHT, Insular Auditor, and
METROPOLITAN WATER DISTRICT,
Petitioners,

v.

CITY OF MANILA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

BRIEF FOR THE RESPONDENT.

The proceedings in this case were begun in the Supreme Court of the Philippine Islands, January 8,

1925, by the filing of a petition by the City of Manila praying an injunction and writ of mandamus. The defendants were the Insular Collector of Internal Revenue, the Insular Treasurer, the Insular Auditor, and the Metropolitan Water District. The injunction and writ of mandamus were granted as prayed in the petition. Thereupon the defendants filed in this court a petition for a writ of certiorari which was granted June 1, 1926.

STATEMENT OF FACTS

The City of Manila is a municipal corporation created by Chapter 60, Title X, of the Philippine Administrative Code, Act No. 2711.

Prior to 1919, the City had control of the administration and management of the water systems which supplied water for municipal and public purposes and for the use of the inhabitants of Manila. Those systems comprised the Carriedo system, taken over from the defunct "Ayuntamiento de Manila," and the new Montalban system built under the authority conferred by section 70 of the act of July 1, 1902, 32 Stat. 691, and act No. 1323 of the Philippine Commission, April 14, 1905. Paragraphs XII to XVII, inclusive, of the petition filed in the court below (R. 7-8). Having such control, as fiduciary of the Carriedo fund and owner of the Montalban system, the City enjoyed the benefit of the free use of water from both systems for the needs of its department offices, markets, and other municipal buildings, for sprinkling the streets, parks and gardens, for extinguishing fires, for public hydrants, and for other municipal purposes.

March 6, 1919, the Philippine Legislature enacted

Act No. 2832, creating a public corporation denominated the Metropolitan Water District. The area within which it operates includes the City of Manila and certain contiguous municipalities. Its powers, functions and duties, exercised by a board called the District Board, include among other things the construction, maintenance and operation of a water system for the purpose of supplying water to the inhabitants of the district and the fixing and collection of proper charges therefor. After the enactment of the act and the creation of the Metropolitan Water District the administration and management of the water systems formerly operated by the City of Manila were turned over to the Metropolitan Water District.

Immediately a dispute arose between the Water District and the City as to the construction of Section 9 of Act 2832, in that while the District contended that said section conveyed and transferred to it the dominion and ownership of the City's water system, the City maintained that under the Spanish text of said section, which should control, for the bill as well as the act were discussed and finally passed in the Spanish language, the dominion or ownership of the system was still vested in her, and the Act had only the effect of transferring to the District the possession and administration thereof. Wherefore the City contended that she was, as she had always been, entitled to the free use of water from the system.

Finally, the Water District went to the Insular Auditor, presumably being of opinion that he had authority to settle the dispute. The Insular Auditor assumed jurisdiction and decided the controversy in favor of the Metropolitan Water District, and for the purpose of enforcing his decision did, on January 9,

1922, direct the Collector of Internal Revenue (1) to cancel certain warrants drawn in favor of the City (then awaiting the Auditor's countersignature) representing the City's share of the internal revenue collections, and (2) to draw a warrant on the balance due the City *in favor of the Metropolitan Water District* "in settlement of part of the accounts of the latter against the City of Manila now long standing." The Collector of Internal Revenue complied and the warrant was accordingly drawn and the money paid to the Water District. Thereafter, and until November, 1924, the same course was pursued, the Auditor authorizing and directing the diversion and payment to the Metropolitan Water District of the money in the treasury due the City as its share of the internal revenue collections.

November 10, 1924, the City Attorney wrote a letter to the Collector of Internal Revenue again protesting that the diversion and payment to the Water District of the money due the City, without the consent of the City, was in violation of express provisions of law, and demanding that thenceforth all payments out of the internal revenue fund due the City of Manila be paid to the City of Manila (R. 18).

By virtue of an arrangement between the Insular Auditor and the Collector of Internal Revenue, and for the purpose of putting the present controversy to a judicial test, the latter official issued two warrants under date of December 9, 1924, and December 23, 1924, in favor of the City of Manila, instead of in favor of the District, covering the former's share in the internal revenue collections, which warrants in pursuance of the said agreement, were not countersigned by the Auditor (Par. 12, special defense, R. 27). Whereupon the Collector of Internal Revenue, on advice of the

Auditor, notified the City Attorney that within ten days from the date of his letter, January 5, 1925, he would draw warrants in favor of the Metropolitan Water District for the sums due the City out of the internal revenue collections for the fourth quarter of the year 1924 (R. 19).

Thereupon the petition for an injunction and writ of mandamus was filed (R. 1-16). A preliminary injunction was granted restraining the Insular Treasurer from paying any warrant issued by the Auditor or the Collector of Internal Revenue in favor of the Water District against the funds belonging to the City as its allotment of the internal revenue collections and the special assessments provided for in Act No. 3065 (R., 20-21). The defendants' demurrer to the petition was overruled (R., 23). They then filed a special defense (R., 24-27) to which the petitioner demurred (R., 44-51) and on that issue the case was finally heard on November 25, 1925 (R., 51).

December 21, 1925, the court rendered final judgment directing that the preliminary injunction be made permanent, that a writ of mandamus issue ordering the Collector of Internal Revenue to issue in favor of the City of Manila, and not the Metropolitan Water District, all the warrants which he ought to issue for the City's share of the internal revenue collections, and whatever other fiscal collections might be due the City, and ordering the Insular Auditor to countersign and approve any such check or warrant which the Collector of Internal Revenue should so issue in favor of the City of Manila (R., 51-77).

THE QUESTIONS OF LAW

It is clear that this case does not involve the merits of the controversy between the City of Manila and the Metropolitan Water District in respect of the City's liability to pay for water for municipal purposes.

The questions of law presented and the propositions on which the City of Manila relies are:

1. The City is entitled by express provisions of law to the payment of the quarterly allotments to it of the internal revenue collections.

2. The duty of the Collector of Internal Revenue to make such payments to the City is a ministerial duty.

3. The duty of the Auditor to countersign the warrants for the City's share in the internal revenue collection is likewise ministerial.

4. The Auditor's action in directing the diversion and payment to the Metropolitan Water District of the money in the treasury payable to the City as its share of the internal revenue collections, was without authority of law and amounted to a usurpation (1) of the judicial function in attempting to settle and decide a justiciable controversy between the City of Manila and the Metropolitan Water District, and (2) of the legislative function in attempting to take money out of the treasury for a purpose not authorized by the legislative authority.

5. The jurisdiction of this Honorable Court.

1. The Right of the City to the Internal Revenue Collections.

The right of the City of Manila to a 30% share of the internal revenue and special taxes collections is

plain, undisputed and conclusively determined by the following provisions of the Administrative Code and the provision of Sec. 3 of Act No. 3065.

"Sec. 490. *Disposition of internal revenue in general.*—Internal revenue collected under the laws of the Philippine Islands and not applied as hereinabove provided or otherwise specially disposed of by law shall accrue to the Insular Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment under the next succeeding section.

"Sec. 491. *Allotments of internal revenue for special purposes.*—Of the internal revenue accruing to the Insular Treasury under the preceding section there shall be set apart ten per centum as a provincial allotment, ten per centum as a road and bridge allotment, and twenty per centum as a municipal allotment; but the amounts allotted to said several purposes during any year shall not be greater than the amount allotted for the same purposes during the fiscal year nineteen hundred and nine."

* * * *

"Sec. 494. *Apportionment and use of municipal allotment.*—The municipal allotment shall be for the benefit of the inhabitants of the Islands in the purview of their community requirements, being available for municipal or other use as hereinbelow provided.

* * * *

"Sec. 495. *Status of cities, townships, and other local governmental divisions.*—For purposes of the allotment of internal revenue, a chartered city, township, or other local governmental division

not constituting part of a municipality proper shall have the status of a municipality and shall be deemed to be included under the term 'municipality' as used in this chapter.

"The City of Manila shall receive the shares which it would receive if it were both a municipality and a regularly organized province, and for the purposes hereof shall be deemed to be both the one and the other."

Section 3 of Act No. 3065 reads:

"Sec. 3. Ten per centum of the tax collected under this Act shall be distributed among the provinces and municipalities in accordance with the provisions of section four hundred and ninety-six of the Administrative Code, five per centum accruing to the provinces and the other five to the municipalities."

2. The Duty of the Collector to Issue Warrants in Favor of the City.

That the duty devolved upon the Collector of Internal Revenue to issue warrants for quarterly payments of the City's allotment is purely ministerial, cannot be gainsaid. The law is clear and unambiguous in this respect.

Section 497 of the Administrative Code provides:

"Sec. 497. *Warrants for quarterly payment of allotments.*—The payment of the internal revenue allotments *shall* be made from the Insular Treasury quarterly, upon warrants drawn by the Collector of Internal Revenue."

3. The Duty of the Auditor to Countersign the Warrants in Question.

It is likewise a ministerial duty of the Insular Auditor to countersign such warrants, because all the conditions mentioned in *Wright* v. *Ynchausti,* No. 316, October Term, 1926, decided December 13, 1926, which make such countersigning a mere ministerial duty, are present in this case, in that:

(a) The Insular Auditor had no discretion to pass upon the merits of the claim for which such warrants would have been drawn. The right of the City to a portion of the internal revenue collected by the Collector is undisputable, clear and conclusively fixed by the hereinbefore quoted provisions of the Administrative Code.

(b) There being no dispute between the Bureau of Internal Revenue and the City of Manila as to the latter's claim to the internal revenue collection, the only function of the Insular Auditor is to determine whether warrants are drawn by the proper officer, and that the amount stated in them represent the correct share of the City. There is no question that the Collector of Internal Revenue is the proper officer to draw the warrants.

(Sec. 497 of Administrative Code, *supra.*)

(c) Such warrants are applicable to the revenue funds in the hands of the Collector of Internal Revenue by such express, plain and clear provisions of law as to leave no room for doubt as to its meaning.

(See Sec. 497 of the Administrative Code, *supra.*)

Section 621 (Chapter 26, the Accounting Law) provides:

> "Sec. 621. *Countersigning of warrants by Auditor.*—No Insular warrant shall be paid by the Treasurer until countersigned by the Auditor or by an officer of the Bureau of Audits thereunto authorized in writing by him."

When an appropriation is made by the legislative authority for a specific purpose the duty of the disbursing officer to make the payment involves no discretion, it being purely ministerial, and may be compelled by mandamus.

> *Smith* v. *Jackson*, 241 Fed. 747, 246 U. S. 388; *Parish* v. *MacVeagh*, 214 U. S. 124.

The cases cited are the leading cases. Other illustrations are found in *McCarl* v. *Cox*, 8 Fed. (2d) 669, *Loisel* v. *Mortimer*, 277 Fed. 882, *Hetfield* v. *Barber*, 2 Fed. (2d) 723, all salary cases; *Cortelyou* v. *United States*, 32 App. D. C. 20, to compel payment of money appropriated by Congress for a manuscript; *State Library* v. *Kenfield*, 55 Cal. 488, to compel drawing of a warrant on the state treasurer for money in the state treasury belonging to the State library fund; *Purifoy* v. *Andrews*, 101 Ala. 643, 16 Sou. 541, to compel the issuance of a warrant for a county's share in certain surpluses; *State Lunatic Asylum* v. *State Auditor*, 46 Mo. 326, to compel issuance of a warrant in favor of the State asylum in accordance with an appropriation act; *Campbell* v. *Steele*, 37 La. Ann. 353, to compel the issuance of a warrant for payment of a claim for which an appropriation had been made; *Houghton* v. *Auditor General*, 9 Mich. 141, to compel the issuance of a warrant for payment of a tax balance due a county.

The duty of the Insular Auditor to countersign the warrant, properly drawn by the officer authorized and directed to do so, for a specific purpose authorized and provided by law, is no less ministerial. *Wright* v. *Ynchausti & Co.*, decided December 13, 1926.

Although the subject matter and the applicable provisions of law are different, this case is in this essential respect like the case of *Wright, Auditor,* v. *Ynchausti & Co.*, decided December 13, 1926, in that here as there the Auditor has undertaken to assume jurisdiction of a matter governed by express provisions of law and to act according to his own judgment without regard to and in violation of such express provisions of law. In the *Ynchausti* case the law committed to the Collector of Customs the duty of determining the right of protestants to a refund of customs duties; notwithstanding the express provisions of law the Auditor in that case assumed jurisdiction and decided for himself that the customs duties in question should not be refunded. In the present case, the law provides that certain funds in the Insular Treasury shall be appropriated and allotted to the City of Manila and that the payment of such allotments shall be made quarterly upon warrants drawn by the Collector of Internal Revenue; notwithstanding those provisions of law, however, the Auditor refuses to countersign the warrants so drawn by the Collector of Internal Revenue and directs that other warrants be drawn in favor of an alleged creditor of the City, the Auditor having decided that the indebtedness claimed to be due is a liability of the City which should be paid.

In the *Ynchausti* case the Auditor's duty to countersign the warrant drawn by the Collector of Customs

was held to be ministerial, because the law expressly provided for the determination of the right to such customs refunds and the drawing of such warrants by the Collector of Customs. In the present case the Auditor's duty to countersign the warrants drawn by the Collector of Internal Revenue *in favor of the City* was no less ministerial, because the law expressly provided for the allotment of the funds in question to the City and the drawing of such warrants in favor of the City. If his duty, therefore, is ministerial he may be compelled by mandamus to perform it, as was held in the *Ynchausti* case.

In *Roberts, Treasurer,* v. *United States,* 176 U. S. 221, the Court said (pp. 229-231):

> "The law relating to mandamus against a public officer is well settled in the abstract, the only doubt which arises being whether the facts regarding any particular case bring it within the law which permits the writ to issue where a mere ministerial duty is imposed upon an executive officer, which duty he is bound to perform without any further question. If he refuse under such circumstances, mandamus will lie to compel him to perform his duty. This is the principle upheld by this court in *United States* v. *Black,* 128 U. S. 40, and upon the authority of that case the defendant claims that no mandamus can be issued against him.
>
> The writ was refused in the *Black* case, because, as the court held, the decision which was demanded from the Commissioner of Pensions required of him, in the performance of his regular duties as commissioner, the examination of several acts of Congress, their construction and the effect which the latter acts had upon the former, all of which required the exercise of judgment to

such an extent as to take his decision out of the category of a mere ministerial act. A decision upon such facts, the court said, would not be controlled by mandamus. The circumstances under which a party has a right to the writ are examined in the course of the opinion, which was delivered by Mr. Justice Bradley, and many cases upon the subject are therein cited, and the result of the examination was as just stated.

In this case the facts are quite different. There is but one act of Congress to be examined, and it is specially directed to the Treasurer. We think its construction is quite plain and unmistakable. It directs the Treasurer to pay the interest on the certificates which had been redeemed by him, and the only question for him to determine was whether these certificates had been redeemed within that meaning of that act. That they were, we have already attempted to show, and the duty of the Treasurer seems to us to be at once plain, imperative, and entirely ministerial, and he should have paid the interest as directed in the statute.

This case comes within the exception stated in the *Black* case, that where a special statute imposes a mere ministerial duty upon an executive officer, which he neglects or refuses to perform, then mandamus lies to compel its performance; but the court will not interfere with the executive officers of the Government in the exercise of their ordinary official duties, even when those duties require an interpretation of the law, the court having no appellate power for that purpose. On this last ground the court denied the writ.

Unless the writ of mandamus is to become practically valueless, and is to be refused even where a public officer is commanded to do a particular act by virtue of a particular statute, this writ should be granted. Every statute to some extent requires construction by the public officer whose

duties may be defined therein. Such officer must read the law, and he must therefore, in a certain sense, construe it, in order to form a judgment from its language what duty he is directed by the statute to perform. But that does not necessarily and in all cases make the duty of the officer anything other than a purely ministerial one. If the law direct him to perform an act in regard to which no discretion is committed to him, and which, upon the facts existing, he is bound to perform, then that act is ministerial, although depending upon a statute which requires, in some degree, a construction of its language by the officer. Unless this be so, the value of this writ is very greatly impaired. Every executive officer whose duty is plainly devolved upon him by statute might refuse to perform it, and when his refusal is brought before the court he might successfully plead that the performance of the duty involved the construction of a statute by him, and therefore it was not ministerial, and the court would on that account be powerless to give relief. Such a limitation of the powers of the court, we think, would be most unfortunate, as it would relieve from judicial supervision all executive officers in the performance of their duties, whenever they should plead that the duty required of them arose upon the construction of a statute, no matter how plain its language, nor how plainly they violated their duty in refusing to perform the act required."

Another mandamus case against the Secretary of the Treasury is that entitled *Cortelyou, Secretary of the Treasury*, v. *United States*, 32 App. D. C. 20, in which that officer was compelled to pay an amount of money appropriated by Congress for a manuscript.

Cases in which the writ of mandamus has been is-

sued against state comptrollers and auditors are galore. The following are a few of them: To compel audit of claim, *Fowler* vs. *Pierce*, 2 Cal. 165; *McDougal* v. *Bell*, 4 Cal. 177; to compel audit or rejection of certain claims against state, *Noyes* vs. *Sohmer*, 81 Misc. 522, 143 N. Y. Supp. 475; to compel certification of moneys received by attorney-general on account of taxes sued for, *San Mateo County* v. *Oullahan*, 69 Cal. 647; to compel distribution of certain school moneys, *State* v. *Staub*, 61 Conn. 553, 23 Atl. 924; to compel payment of sum alleged to be due for military services, *Compton* v. *Anderson*, 52 N. J. L. 150, 18 Atl. 584; to compel comptroller to give county officers the rate per centum upon taxable property in their respective counties necessary to make payment of interest on state bonds, *Morton v. Comptroller General*, 4 S. C. 430.

The petitioners herein contend that their action in this case is supported by that part of section 24 of the Organic Act of August 29, 1916, 39 Stat. 545, which provides that:

> "The auditor shall, except as hereinafter provided, have like authority as that conferred by law upon the several auditors of the United States and the Comptroller of the United States Treasury."

In doing so they assume that the former auditors for the several departments and the comptroller of the Treasury (whose authority is now vested in the Comptroller General of the United States) would have had authority to do what the Insular Auditor and his co-petitioners have attempted in this case, namely, to divert a sum of money in the treasury allotted by law

to a municipality and cause it to be paid to an alleged creditor of the municipality. In this, they fall into error. No such authority has ever been assumed by the accounting officers of the United States in any case of record. There is no hint or suggestion of any such authority in section 236 of the Revised Statutes or in the Dockery Act of July 31, 1894, 28 Stat. 207, or in the act of May 21, 1920, 41 Stat. 613, or in the Budget and Accounting Act of June 10, 1921, 42 Stat. 24. Even the Kiess Bill, H. R. 16587, 69th Congress, 2nd session, which purported to increase and clarify the powers and duties of the Auditor for the Philippine Islands, contains no such grant of authority or suggestion of such power.

It is likewise a mistake to assume that in the United States the accounting officers, including the Comptroller General, are vested by law with power and authority to settle and decide controversies to which the United States may be a party without a resort to the courts. Whenever there are controverted questions of fact or law, the case is invariably finally decided in the courts. The decision of the Comptroller General is not conclusive and in no sense binding on the courts. As the Court of Claims said in *Real Estate Savings Bank* v. *United States*, 16 Ct. Cls. 335, 351:

> "A claimant against the United States is no more concluded by the refusal of the Comptroller to pass his account than a claimant against a corporation is concluded by the refusal of its officers to pay his demand."

And in denying the power of the Comptroller to determine the rights of the parties:

> "The Comptroller is merely an accounting officer, the agent of one only of the parties to claims against the government, the officer clothed with authority to determine whether the Treasurer shall be authorized to pay a demand in the form and under the circumstances in which it is presented to him, *and not an arbitrator to finally settle and determine the legal rights of both parties.*" (Italics ours.)

Whenever a claim is denied by the accounting officers, the claimant has a right to proceed in the Court of Claims under section 145 of the Judicial Code (United States Code, Title 28, Sec. 250), where he may have a full hearing on the facts and the law without regard to the adverse decision of the accounting officers. Likewise, whenever any claim or matter is pending in one of the executive departments which involves controverted questions of fact or law, the head of such department may transmit such claim to the Court of Claims where it may be heard by the court under rules and procedure fixed by the court. Sec. 148 Judicial Code (U. S. Code, Title 28, sec. 254).

4. The Auditor's Action in Intercepting and Diverting the City's Share in the Internal Revenue Collections Was a Glaring Usurpation of Judicial and Legislative Powers.

The City contends that the Auditor's action in deciding that the City is indebted to the Water District and in undertaking to enforce that supposed liability by directing the withholding of money in the treasury due the City as its share of the internal revenue collections, and the payment thereof to the Water Dis-

trict, is arbitrary and unwarranted and constitutes (a) a usurpation of the judicial function in attempting to settle and decide a justiciable controversy between the City of Manila and the Metropolitan Water District, and (b) usurpation of the legislative function in attempting to take money out of the treasury for a purpose not authorized by the legislative authority.

(a) The controversy between the City and the Water District is a question of liability. It is not a matter of adjustment of accounts. There are no accounts between the City and the Water District. The sole question is a question of *law*, whether the City is entitled to the free use of water from the systems taken over by the Water District. If its right is established, there is no liability for the charges made by the Water District. If its right is not established, it is clearly indebted to the Water District for the water furnished and may be sued if it does not pay. The controversy has no resemblance to an accounting adjustment over which the Auditor would have jurisdiction under section 584 of the Administrative Code. The controversy is peculiarly one which can only be settled satisfactorily by judicial process. Among other defenses to the claim of the Water District, the City contends that any title which the Water District may now have in and to the water systems is held by the Water District *in trust* for the use and benefit of the City. It is an equitable defense on which the City has a right to be heard. The courts of law and equity are established for the purpose of hearing and deciding such questions. Under their respective charters both the City of Manila and the Metropolitan Water District can sue and be sued. If the Water District has a valid claim

against the City, that fact can be ascertained and determined in a judicial proceeding. If, as the City contends, the Water District holds the title to the water systems in trust for the use and benefit of the City, that can also be determined in the same maner and in the same proceedings.

That the accounting officers, including the Insular Auditor, cannot assume jurisdiction to decide such matters, is illustrated by the case of *Smith* v. *Jackson*, 241 Fed. 747, 246 U. S. 388. In that case the Auditor for the Canal Zone withheld payment of a judge's salary on the ground that the judge was indebted to the United States, the indebtedness being determined not by the judgment of any court but simply by the finding of the Auditor. To quote from the opinion of the trial court, 241 Fed. 774:

> "The indebtedness is denied by Judge Jackson. He denies it upon the grounds that there was no law or regulation under which the indebtedness was or could have been created. He denies that the respondent has authority to withhold any part of his pay in the collection of an alleged but disputed indebtedness. And yet the executive officer has sat as a court, and, without evidence or hearing, except what he considered evidence, and except what he considered a hearing, decided a controversy that he created by his own action. He has passed upon a disputed claim which is a disputed claim merely because he has created the dispute in refusing to make payment where it was his plain duty to make such payment. His conduct, however good his intention may have been, hardly falls short of being shocking to the judicial sense of justice, proper and orderly procedure, in a matter that is clearly justiciable."

The controversy in this case is "clearly justiciable" and should have been so recognized by the Insular Auditor, especially in view of section 650 of the Administrative Code, with which the Auditor is doubtless familiar, which provides:

> "Sec. 650. *Collection of indebtedness adjudicated by Auditor.*—The Insular Auditor shall, through the proper channels, supervise and procure the collection and enforcement of all debts and claims, and the restitution of all funds and property, found to be due the Government in his settlement and adjustment of accounts; *and if any legal proceeding is necessary to such end, he shall request the Governor-General to authorize and direct the institution of the same.* * * *" (Italics ours.)

There is nothing in the Act of August 29, 1916, 39 Stat. 545, from which the Auditor derives his powers, which warrants the course of action attempted by the Auditor in this case, and much less, that for the purpose of enforcing an alleged settlement, he can take money payable to a municipality and dispose of it in favor of its alleged creditor. As the Supreme Court of the Philippine Islands said in its opinion in this case: "No authority has been cited, and none will ever be found to legalize such a proceeding." (R. 73). On this decisive point, Justice Street, who concurred in the result although not agreeing with all that was said in the majority opinion, said:

> "The Insular Auditor certainly does not have the power to put his hands into the city treasury and take out money to pay its debts however meritorious the obligation; and if he does not have this power he cannot intercept and divert funds in course of transmission to the city."

(c) That the Auditor has undertaken to withdraw and divert money in the treasury to the credit of the City, without any legislative authority whatever and over the protest of the City, is so plain from all that has already been said that it seems unnecessary to argue at length his invasion of the legislative field of appropriation. Neither the Auditor nor any other person has any authority to withdraw or divert money from the treasury for any purpose "except in pursuance of an appropriation by law." (Act of August 29, 1916, 39 Stat. 545, 547). As this court has said, in *Reeside* v. *Walker*, 11 How. 272, 291.

> "However much money may be in the treasury at any one time, not a dollar of it can be used in the payment of anything not thus previously sanctioned. Any other course would give to the fiscal officers a most dangerous discretion."

There is nothing in section 24 of the Act of August 29, 1916, 39 Stat. 545, which gives to the Auditor any legislative power of appropriation. There is nothing in section 588 of the Administrative Code, as amended by Act No. 3066, which gives him that power *except the words "enforce the settlement of accounts"* which he interprets as giving him the power to do what he has attempted to do in this case. On those words alone rests the whole argument that he has such power to stop the payment of public money in the public treasury to the credit of the City of Manila and arbitrarily to make an appropriation of that money to pay an alleged debt—not founded on the judgment of any court, but simply on the finding of the Auditor himself that the claim on such alleged indebtedness is "just, legal and proper."

The Organic Law, the Act of August 29, 1916, ch. 416, 39 Stat. 545, provides:

> "That no money shall be paid out of the treasury except in pursuance of an appropriation by law. * * *
>
> "That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only."

The City's share of the internal revenue collections is a share in public money assessed and collected for governmental purposes. In so far as the City is concerned, its share of that money is assessed and collected for a specific purpose. Under the law it may be paid out for such purpose only. To withdraw it or divert it for any other purpose (as here, for example, to pay an alleged debt due from the City to a public corporation, notwithstanding the objection and protest of the City) is contrary to the express provisions of the Organic Law. Such a withdrawal and diversion is also in violation of section 600 of the Philippine Administrative Code, 1917, which provides:

> "Sec. 600. *Use of appropriated funds.*—All moneys appropriated for the various branches of the public service shall be available solely for the specific purposes for which appropriated, and for no others. Moneys appropriated for salaries and wages shall not be available for contingent expenses or vice versa."

There is no contention by the petitioners herein that any appropriation has ever been made to pay the alleged debt of the City to the Metropolitan Water District, or even that there has been any adjudication

of the asserted legal liability other than the decision and action of the Auditor complained of in this proceeding.

The fact that the City may owe a debt to the Metropolitan Water District (assuming only for the argument that it does owe such a debt) does not give to the creditor, or to the Insular Auditor acting in the interest of the creditor, any right to appropriate the money in the Insular treasury to pay that debt. *Reeside* v. *Walker,* 11 How. 272.

It is a novel doctrine that money in the treasury may be garnisheed by a creditor of government. Even more novel and striking is the attempt made in this case not only to garnishee the money in the treasury to the credit of the City, for the payment of the alleged debt due from the City to the Water District, but also *to establish the liability* without any judicial trial or hearing and over the protest of the City, simply by the finding of the Auditor that the liability existed and that the claim was "just, legal and proper."

The right of the City to the money in the treasury allotted to it by law is absolute and cannot be taken away by any other than the local legislature or the Municipal Board (Sec. 2442, Ad. Code) which has control over the appropriation of public money. The provisions of law are plain and cannot be evaded by interpretations of the law creating the accounting officers and by historical arguments as to the powers of those officers. In this respect this case is similar to *Wright* v. *Ynchausti & Co.,* decided December 13, 1926, in which it was held by this court, affirming the Supreme Court of the Philippine Islands, that the general powers of the Insular Auditor over accounting matters and to determine the availibility of an appro-

priation for the payment of public money, did not warrant his interference with the refunding of customs duties which was governed by specific provisions of law.

5. The Jurisdiction of this Honorable Court.

It is vigorously contended by the petitioners that neither the Supreme Court of the Philippine Islands nor this Honorable Court has jurisdiction over the subject of this controversy, the matter being one falling within the exclusive jurisdiction of the Chief Executive of the Philippine Islands through an appeal which the respondent should have taken from the decision of the Auditor in ordering the Collector of Internal Revenue to issue warrants for the City's share in the internal revenue allotment in favor of the Metropolitan Water District.

It is respectfully submitted that such action of the Auditor was not a proper subject for appeal to the Governor General.

(a) *The settlement made by the Auditor in this case was suspended.*

In the first place, paragraph 11 of the special defense in the answer (R. 27) admits the allegation contained in paragraph VI of the petition, i. e., that the Auditor instructed the Collector of Internal Revenue that warrants covering the internal revenue collections allotted to the City be drawn in favor of the District instead of said City.

Paragraph IV of the petition alleges that from and after January, 1922, (R. 4-5) the Collector of Internal Revenue had been drawing such warrants to the District. Paragraph VII (R. 5-6) alleges that the City

requested the Collector to stop such payments to the District.

Paragraph 12 of the special defense (R. 27) impliedly admits the above facts, for it alleges that "for the purpose of putting the present question to a test," both the Insular Auditor and the Collector of Internal Revenue agreed to issue, and the Collector issued in fact, two warrants in favor of the City of Manila instead of the Metropolitan Water District, and the Auditor refused to countersign said two warrants and returned them unsigned to the Collector.

So, the enforcement of the alleged settlement of accounts made by the Auditor from 1922, which might have been the subject of an appeal to the Governor General on the part of the City—although that would be very doubtful, for it is the very settlement and not the *enforcement* thereof which is appealable—, was suspended by the drawing of the warrants for the last quarter of 1924 in favor of the *City* instead of the District, as had been done since January, 1922, owing to the protest filed by the City against such previous payments to the District. The drawing of such warrants in favor of the City was not appealable to the Governor-General for it was in conformity to the City's desire. On the other hand, the refusal of the Auditor to countersign such warrants was not a decision of the same kind as those that may be appealed to the Governor-General. Such refusal to countersign was NOT evidently a SETTLEMENT OF ACCOUNTS or anything like, but a mere non-compliance with a ministerial duty by the Auditor. Moreover, petitioners plainly avowed that such refusal was only "for the purpose of putting the present question to a test," which clearly means that petitioners herein wanted the City to take

the case to the court. The Collector of Internal Revenue in his letter Exhibit "C" (R. 19-20), in which he threatened to substitute for the uncountersigned **warrants other warrants** to be issued payable to the District after ten days from the date of said letter, made this statement: "This information is given so that, if desired, the City of Manila may institute any JUDICIAL ACTION it may deem proper and expedient."

It thus appears that the petitioners impliedly admitted that the action taken by them was not one requiring an appeal to the Governor-General, but rather the institution of court proceedings.

(b) *An appeal to the Governor-General was not a proper, speedy or adequate remedy.*

Supposing, however, that the City could have appealed to the Governor-General from such refusal to countersign the warrants, such appeal would not have been a proper, speedy and adequate remedy. The case could not, from the nature of things, be decided by the Governor-General in ten days, and furthermore, the Governor-General is not required or empowered by any provision of law to take any action similar to the issuance by a court of a writ of injunction, so that the rights of the City could not have been properly protected by its resorting to an appeal to the Governor-General, even admitting that the action of the petitioners was appealable.

(c) *Action of the Auditor in this case was not a decision.*

But again we respectfully submit that the City was not in duty bound to appeal to the Governor-General from the action of the Auditor in refusing to countersign the warrants in question. Under the provisions of Sec. 25 of the Jones Law, an appeal may be taken by any aggrieved person from any "action or decision of the Auditor in the SETTLEMENT OF HIS ACCOUNT OR CLAIM." The claim of the City was already SETTLED and DECIDED by the Auditor prior to 1922. In other words, when he gave his said order to the Collector of Internal Revenue the City's claim was already SETTLED. Such order was not a SETTLEMENT but the ENFORCEMENT of a settlement already made. It is so considered by the Auditor himself for in taking such action he invoked Sec. 588 of the Administrative Code which deals with the enforcement of settlements made by the Auditor.

None of the provisions of Sec. 24 of the Jones Law, however, warrants the Auditor's action. Such section does not provide how a settlement of accounts shall be enforced by the Auditor, and much less that for the purpose of enforcing such settlement he can take money payable to a person and dispose of it in favor of his alleged creditor.

Sec. 588 of the Administrative Code empowers the Auditor to authorize and enforce his settlements of accounts between bureaus and offices or between local governments. It does not, however, prescribe how such enforcement shall be effected. No other provision of law authorizes the method of enforcement which the Auditor attempted to adopt in the instant case. Moreover, a subsequent section in the Administrative Code (Sec. 650) is in fact a limitation on the Auditor's power to enforce his settlements of accounts granted by Sec. 588, because said Sec. 650 provides that the

collection and enforcement of debts and claims shall only be SUPERVISED and PROCURED by the Auditor THROUGH PROPER CHANNELS. The section further provides that if any LEGAL PROCEEDING be necessary to such end, that is, where the debtor refuses to pay or restitute funds due the Government, then the Auditor shall request the Governor-General to authorize the institution of such proceedings.

Court action on the part of the Water District would have been welcomed by the City. Its liability would have thus been determined by men learned in the law and of reputed experience and impartiality. It would have thus been in a position to raise the major questions of its ownership and rights in and to the water supply system and of the constitutionality of Act No. 2832 creating the District upon which the Auditor based his decision prior to 1922. Obviously the determination of the constitutionality of a law is beyond the powers of the Auditor. This explains the stubborness of the City in refusing to abide by the decision and settlement of the Auditor.

(d) *The action of the Auditor in this case is not a decision within the meaning of the Jones Law; but even assuming, for the sake of argument, that it was, such decision is not binding upon the courts.*

The action of the Auditor in attempting to dispose of the City's allotment of the internal revenue collections is not a decision. There were no contradictory or opposing claims to such allotment. The Metropolitan Water District never claimed to be entitled to it.

But assuming, for the sake of the argument, that

such action was a decision, such decision is not conclusive upon the judicial branch of the Government. *Smith* v. *Jackson,* 246 U. S. 388; *Real Estate Savings Bank* v. *United States,* 16 Ct. Cls. 335; *United States* v. *Harmon,* 147 U. S. 268; *Longwill* v. *United States,* 17 Ct. Cls. 288; 15 Opinions Atty. Gen. 192.

The fact that an Appropriation Act directs the payment of such claims as "may be certified to be due by the accounting officers" does not vest in them exclusive jurisdiction. They simply act in their usual capacity of auditing officers, leaving the claimant, unimpaired, a judicial remedy, *Sowle* v. *United States,* 38 Ct. Cl. 525.

(e) *Neither the City nor the Metropolitan District is an Executive branch of Government.*

But the City of Manila is clearly not an executive branch of the government. The executive branch of the Philippine Government is composed of the Chief Executive and the Executive Departments (Chapters 4 and 5, Title II, Administrative Code). The City of Manila is a political body corporate created by the Philippine Legislature for the administration of the City's affairs. (Ch. 60, Title X, Administrative Code). It is not a dependency or subdivision of any executive department, although in a few administrative matters it must obtain the sanction or approval of the Secretary of the Interior (Ibid). In fact the City does not perform any duty or exercise any function, by delegation or otherwise, belonging to the executive power of the government. In many aspects its interests are opposed to those of the central government. The Philippine Reports contain numerous cases between the City and the Philippine Government (See Sec. 2, Administrative Code).

In paragraph I of the petition it is alleged that the City is a municipal corporation created by the Legislature, and is empowered to sue and be sued. In paragraph II of the same petition it is averred that the District is a public corporation with powers to sue and be sued. No one of the executive branches of the Government is given by law this power to sue and be sued. Therefore, neither the City nor the District is an executive branch of the Government.

CONCLUSION.

We have studied carefully and painstakingly not only the facts presented in the record and the applicable statutes, but also every case cited in the two briefs filed in behalf of the petitioners. We have been unable to find one case which supports the extraordinary position taken by the Insular Auditor and the broad powers claimed for him under section 24 of the Organic Act of 1916. On the question whether an officer of the government may be compelled by a writ of mandamus to do a certain act, cases may be cited on either side. It is well settled, on the one hand, that mandamus will issue to compel an officer to perform a purely ministerial duty, and on the other hand that it will not issue to compel or control the performance of a duty in the discharge of which he has any lawful discretion. As this court has said (*Work v. Rives*, 267 U. S. 175), the cases range from the wide discretion in some instances vested in the executive officers in the construction of the statute to be executed, to cases where the duty is so obviously ministerial that the officer can do only one thing. Thus *Kendall v. United States*, 12 Peters, 524, is an early leading case of the latter class, and on the other side *Decatur v. Pauld-*

ing, 14 Pet. 497, is an example of the first class. "Between these two early and leading authorities, illustrating the extremes, are decisions in which the discretion is greater than in the *Kendall* case and less than in the *Decatur* case, and its extent and the scope of judicial action in limiting it depend upon a proper interpretation of the particular statute and the Congressional purpose." *Work v. Rives*, 267 U. S. 175.

So in this case, we are confronted with the question whether the duties imposed upon the petitioners here, the Collector of Internal Revenue and the Auditor, with respect to the payment to the City of Manila of its share of the money in the treasury allotted to it by law out of the internal revenue collections, involved the exercise of any judicial or quasi-judicial discretion, or whether those duties were not purely ministerial. It seems so clear, in view of the express provisions of law setting aside the fund in question for the City and directing the drawing of warrants in favor of the City (sections 490-497 of the Administrative Code), that those duties were purely ministerial, and so equally clear that the duty and power of the Auditor under section 24 of the Organic Act of 1916 and section 588 of the Administrative Code did not extend to the extraordinary length contended for by him, that is, to a determination of the legal liability of the City to the Water District and to an "enforcement" of that liability by literally taking from the treasury the money allotted to and due the city,—that argument is unnecessary. This case unavoidably falls within the class of cases of which *Kendall v. United States*, 12 Pet. 524, is the leading case, in that the duties of the defendant officers were purely ministerial and their performance properly compelled by mandamus.

In the last brief filed in behalf of the petitioners it is argued and practically assumed that on the merits the claim of the Water District against the City is incontrovertible and has been settled and decided not only by the Auditor, whose jurisdiction we challenge, but also by the Philippine Legislature and by the Governor General (Petitioners' brief on the merits, Points IV and V, pp. 6-9), and that therefore the result attained being correct and desirable, the court was not justified in interfering, however wrong the petitioners may have been in doing what they did and in refusing to do what they should have done.

As we have already pointed out, and as is obvious from the nature of the case, the case now before the court does not involve the merits of the controversy between the City of Manila and the Water District. The proceeding is one in which the relief sought is an injunction and a writ of mandamus and the only questions involved are the questions as to the power and authority of the government officers whose acts are challenged and the performance of whose ministerial duties is sought to be compelled. We take this occasion, however, as the question is raised by the petitioners, to say that the City here as well as in the court below would welcome the opportunity to present its case on the merits, an opportunity it has never yet had. The controversy is a justiciable controversy. The City denies that it has ever had any hearing on the merits, that it has ever had its day in court, and assures this Court that it has reasonable grounds, both legal and equitable, on which to contest the asserted liability, (1) in that it contends that section 9 of Act No. 2832, on the construction of which the question of the title to the water system depends,

was erroneously translated from the original Spanish text and therefore that the construction placed upon the act by the Water District and the petitioners is founded on error, and (2) that assuming that Act No. 2832 is correctly construed as contended for by the Water District and the petitioners, it is unconstitutional and invalid in that it deprives the City of its *corporate* property without compensation and without due process of law. On those justiciable questions the City is entitled to be heard and is not bound to accept or be subjected to the arbitrary action of the Insular Auditor.

Wherefore the respondent respectfully prays that the decision of the Supreme Court of the Philippine Islands be affirmed with costs.

Respectfully submitted,

GUILLERMO B. GUEVARA,
F. W. CLEMENTS,
LAWRENCE H. CAKE,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 363.—October Term, 1926.

Juan Posados, Jr., as Collector of Internal Revenue; Ben F. Wright, as Insular Auditor; Vincente Carmona, etc., et al., Petitioners,
vs.
The City of Manila.

On Writ of Certiorari to the Supreme Court of the Philippine Islands.

[May 31, 1927.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This was a suit begun by an original petition in the Supreme Court of the Philippine Islands under section 2947 of the Compiled Acts of the Philippine Commission, 1907, praying for an original writ of mandamus directed to Juan Posados, Jr., Collector of Internal Revenue of the Islands and of Manila, and to Benjamin F. Wright, Insular Auditor, requiring the Collector to issue warrants payable to the City of Manila for the share of the internal revenue taxes collected by him due to the City under the statutory law, and requiring the Auditor to countersign those warrants. In furtherance of the main prayer there was a prayer for a temporary injunction against the issue and countersigning of warrants for a part of such receipts in favor of the Metropolitan Water District. The Metropolitan Water District and the Insular Treasurer were also made parties. The Supreme Court after answers and hearing granted the prayer for mandamus against the Collector and Auditor.

The substance of the controversy is this: The City of Manila under Spain owned the water works furnishing water to the city for a great many years, and since the United States became the sovereign in the Islands, the city, created a municipal corporation by the present Philippine government, chapter 60, Title X of the Philippine Administrative Code No. 2711, was authorized to issue bonds for $2,000,000 to enlarge and improve them. March 6, 1919, the Legislature of the Philippine Islands passed a law creating a Metro-

politan Water District for the City and neighboring territory (Act No. 2832) made it a corporation governed by directors and turned over the works to its management. A dispute has arisen as to whether the City of Manila should pay to the Metropolitan Water District compensation for water used by the city government. The authorities of the City of Manila contend that the City is not liable because the water works are and have been its property for centuries. The issue was considered by the Metropolitan Water District Board and a majority of the Board reached the conclusion that there was no money due from the city for the water paid. The Governor General has appellate administrative jurisdiction over the decisions and resolutions of the Board—Act 3109—and he took the view of the minority of the Board and held that the City did owe the Metropolitan District for the water furnished it. The City was not a party to this proceeding. In accord with the conclusion of the Governor General, the Insular Auditor directed the Collector of Internal Revenue to withhold from the City's share of the internal revenue collections money enough to pay what was due for the water, and directed the Collector to issue his warrant for that amount from the share of the City in the internal revenue collections in enforcement of the claim of the Metropolitan Board for the amount due.

Section 3 of the Organic Act of the Philippine Islands, known as the Jones Law, 39 Stat. 545, c. 416, directs that no money shall be paid out of the treasury except in pursuance of an appropriation by law; that all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only.

By section 8 of the same act the general legislative power, except as therein otherwise provided, was granted to the Philippine Legislature, authorized by the Act.

The Jones Act describes the duties of the Insular Auditor as follows:

Section 24: "That there shall be appointed by the President an auditor, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine Government and of the provincial and municipal governments of the Philippines, including trust funds and funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property

pertaining to or held in trust by the government of the Provinces or municipalities thereof. He shall perform a like duty with respect to all government branches.

. . .

"The decisions of the auditor shall be final and conclusive upon the executive branches of the government, except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year, in the manner hereinafter prescribed."

Section 25 of the same Act provides:

"That any person aggrieved by the action or decision of the auditor in the settlement of his account or claim may, within one year, take an appeal in writing to the Governor General. . . . If the Governor General shall confirm the action of the auditor, he shall so indorse the appeal and transmit it to the auditor and the action shall thereupon be final and conclusive. Should the Governor General fail to sustain the action of the auditor, he shall forthwith transmit his grounds of disapproval to the Secretary of War, whose decision is final and conclusive."

By section 588 of the Administration Act of 1917, as amended by Act No. 3066 adopted after the passage of the Jones Act, it is provided that the Insular Auditor shall have the power to authorize and enforce the settlement of accounts subsisting between the different bureaus or offices of the Insular service; between such bureau or office and any provincial, municipal, or city government; between provincial governments; between municipal or city governments and between any such provincial and municipal or city governments.

The contention on behalf of the Insular Auditor is that the City of Manila, on the one hand, and the Metropolitan Water Board, on the other, are branches of the Insular Government, and that by virtue of the foregoing statutes he is given authority to settle accounts between them, and that his decision is final and conclusive upon such executive branches, with the appeal provided as above stated. He maintains that this gives him the authority to decide as between the Metropolitan Water Board and the City of Manila, whether the city should pay the water board for the water furnished it because it is necessarily involved in the settlement of accounts between the two corporations and branches of the insular government, that having decided that the money was due for the water furnished from the city to the Metropolitan Board, he is further charged by section 588 of the Administrative

Code with the duty of enforcing that decision and settlement. He may therefore, he says, direct the Collector of Internal Revenue to issue a warrant for such share of the City in the internal revenue collections as may be enough to pay the debt owing from the City to the Water Board and that this is a necessary implication from his power by law to enforce such settlement.

The disposition of the internal revenue receipts is provided by the Administrative Act in the following sections:

"Section 490. *Disposition of internal revenue in general.*—Internal revenue collected under the laws of the Philippine Islands and not applied as hereinabove provided or otherwise specially disposed of by law shall accrue to the Insular Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment under the next succeeding section.

"Section 491. *Allotments of internal revenue for special purposes.*—Of the internal revenue accruing to the Insular Treasury under the preceding section there shall be set apart ten per centum as a provincial allotment, ten per centum as a road and bridge allotment, and twenty per centum as a municipal allotment; but the amounts allotted to said several purposes during any year shall not be greater than the amount allotted for the same purposes during the fiscal year nineteen hundred and nine.

"Section 492. *Appointments and use of provincial allotment.*—The provincial allotment shall be apportioned to the treasuries of the several respective provinces and shall there accrue to their general funds, respectively.

. . .

"Section 494. *Apportionment and use of municipal allotment.*—The municipal allotment shall be for the benefit of the inhabitants of the Islands in the purview of their community requirements, being available for municipal or other use as hereinbelow provided.

"Section 495. The City of Manila shall receive the shares which it would receive if it were both a municipality and a regularly organized province, and for the purposes hereof shall be deemed to be both one and the other.

. . .

"Section 497. *Warrants for quarterly payment of allotments.*—The payment of the internal-revenue allotments shall be made from the Insular Treasury quarterly, upon warrants drawn by the Collector of Internal Revenue."

It is apparent from reading the foregoing sections that they are directions by statutory law as to the distribution of the collections made by the Internal Revenue Collector, and that the share

to be paid to the City of Manila is fixed thereby and the exact figure can be ascertained mathematically. This requires no exercise of discretion, judicial or otherwise after the total amount of the internal revenue receipts are known, and in this case there is no dispute as to that amount. It becomes the ministerial duty of the Internal Revenue Collector to draw his warrant for the share of the City thus fixed by statute. It becomes the duty of the Insular Auditor, when such a warrant of the Internal Revenue Collector is presented to him, after ascertaining that the amount for which it is drawn is in accord with the directions of the statute, to countersign the same. *Kendall* v. *United States,* 12 Peters 524; *Wright* v. *Ynchansti,* 272 U. S. 640, 651, 652.

No matter what the power of the Auditor may prove to be with reference to the settlement of accounts as between the City of Manila and the Metropolitan Water Board, or what his power with reference to enforcing the settlement so reached by him, nothing in the laws of the Islands is disclosed to us which enables the Auditor in the enforcement of such settlements to dispense with or to suspend the operation of positive law in reference to the course which shall be followed in the disposition by the Internal Revenue Collector of the receipts from internal revenue collections which he is directed by the statute to pay to the City. His duty is clearly set forth and he has nothing to do but to comply with it, having ascertained exactly what the share of the City is under the foregoing provisions.

When this share comes to the City under the warrant to be drawn in its favor by the Collector, the question of what shall thereafter be done in respect to it is not a matter that we are called upon to consider. Whether the issue between the Metropolitan Water Board and the City of Manila, in the absence of agreement, is one that must then be decided by a suit in court brought by the Metropolitan Water Board against the City asking for a judgment for the water paid, or whether the issue is to be determined by the Insular Auditor in his asserted power of settling and enforcing accounts between the two branches of the Government, are issues not before us. The only question here is what should be done with the share of the collections made by the Internal Revenue Collector under the sections of the Administrative Code already quoted. By section 2442 of the Laws of the Philippines relating to the City of Manila, there is a provision for a permanent continuing appropria-

tion during the time the City remains the capital of the Islands from any funds in the Insular Treasury, not otherwise appropriated, equal to 30 per cent. of the expenses of the City government within certain other limitations and the Insular Auditor is to ascertain the amount thus appropriated and transfer it to the City. How far this would involve quasi-judicial or administrative discretion not to be controlled by mandamus, it is not necessary for us to consider or decide; because this case relates only to internal revenue receipts and their distribution in respect of which the provisions of law are specific and mandatory as we have seen. The conclusion of the Supreme Court of the Philippines in directing a mandamus to issue against the Internal Revenue Collector and the Insular Auditor was in accordance with the statutory law of the Philippines and was right.

A majority of the Supreme Court of the Philippines reached this conclusion. That Court further expressed an opinion as to the relation of the City to the Insular Auditor and his functions which was not necessary, it seems to us, to decide this case. We desire therefore to limit our opinion to the mere question whether the City's share of the internal revenue collections must be paid to the City by the Collector.

The judgment of the Supreme Court of the Philippines is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.